

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

**Notice of initial substantial holder**

To Company Name/Scheme Qube Holdings Limited (QUB)

ACN/ARSN 149 723 053

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

Name This notice is given by Canada Pension Plan Investment Board (CPPIB) on its own behalf and on behalf of each of its controlled entities from time to time (collectively the **Substantial Holders**).

ACN/ARSN (if applicable) \_\_\_\_\_

The holder became a substantial holder on 02/08/2016

**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 QUB (QUB Shares)	143,243,753	143,243,753	9.89% (based on 1,446,906,600 QUB 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
Substantial Holders	CPPIB's relevant interest arises under s608(1)(b) and (c) (power to control exercise of right to vote securities and/or power to control exercise of power to dispose of securities) of the Corporations Act 2001 (Act). CPPIB is the beneficial holder of 143,243,753 QUB Shares following a placement by QUB of such shares to CPPIB under a Subscription Agreement entered into between CPPIB and QUB dated 15 March 2016, a copy of which is set out as Annexure A.  The other Substantial Holders are taken under s608(3) of the Corporations Act to have a deemed relevant interest in the QUB Shares which CPPIB has a relevant interest in by virtue of s608(3) of the Corporations Act.	143,243,753 QUB Shares

**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
Substantial Holders	Hongkong and Shanghai Banking Corporation Ltd. as custodian for CPPIB	CPPIB	143,243,753 QUB 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	

CPPIB	02/08/2016	\$306,541,631.40 (excluding the "Capital Commitment Payment" payable by QUB to CPPIB under the Subscription Agreement)	143,243,753 QUB Shares
The other Substantial Holders	02/08/2016	N/A – deemed relevant interests	143,243,753 QUB 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
N/A	


#### 7. Addresses

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

Name	Address
Substantial Holders	c/ CPPIB, One Queen Street East, Suite 2500, Toronto, Ontario, Canada M5C 2WC
Hongkong and Shanghai Banking Corporation Ltd.	Hongkong and Shanghai Banking Corporation Ltd. as custodian for the Canada Pension Plan Investment Board, HSBC Custody and Clearing, Level 13, 580 George Street, Sydney, NSW 2000, Australia

## Signature

#### Signed on behalf of the Substantial Holders

print name	Wendy Rae	capacity	Authorised representative
sign here		date	02/08/2016

#### 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.
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**Annexure A**

**This is Annexure A of 36 pages (including this page) referred to in the accompanying Form 603**

**Signed on behalf of the Substantial Holders**

print name Wendy Rae

capacity

Authorised  
representative

sign here



date

02/08/2016

The copy attached to this Annexure A is a true copy of the original.

Qube Holdings Limited  
and  
Canada Pension Plan Investment Board

## Subscription Agreement

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
T +61 2 9230 4000  
F +61 2 9230 5333  
[www.allens.com.au](http://www.allens.com.au)

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This Agreement is made on 15 March 2016

## Parties

- 1 **Qube Holdings Limited** (ACN 149 723 053) registered in Victoria of Level 27, 45-53 Clarence Street, Sydney NSW 2000 (the **Issuer**).
- 2 **Canada Pension Plan Investment Board** of One Queen Street East, Suite 2500, Toronto, Ontario M5C 2W5, Canada (the **Subscriber**).

## Recitals

- A The Qube Consortium and the Brookfield Consortium propose to enter into a Scheme Implementation Deed with Asciano in connection with the acquisition of 100% of the issued share capital of Asciano.
- B If the Scheme is successful, then under the terms of the Ports Sale Agreement, the Issuer proposes to acquire 50% of the Ports Businesses in joint venture with Brookfield, who will hold the remaining 50%.
- C If the Scheme is successful, the Issuer will also have an option to subsequently acquire from BAPS HoldCo or BAPSCo the 50% interest held by Asciano as the date of this agreement in AAT and related shareholder loans provided by Asciano to AAT pursuant to the terms of the AAT Option Agreement.
- D For the purposes of assisting the Issuer to finance its participation in the Scheme and to enable the Issuer to fund the consideration payable for the Ports Businesses under the Ports Sale Agreement, the Subscriber has agreed to subscribe for the Subscription Shares on the terms of this Agreement.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**AAT** means Australian Amalgamated Terminals Pty Ltd.

**AAT Option Agreement** means the AAT option agreement entered into between the Issuer (or a nominee of the Issuer) and BAPS HoldCo (or a nominee of BAPS HoldCo) or BAPSCo for the sale to the Issuer (or a nominee of the Issuer) of the 50% interest held by BAPSCo following the Implementation Date in AAT and related shareholder loans provided by Asciano to AAT.

**ACCC** means the Australian Competition and Consumer Commission.

**Accounts** means the consolidated accounts (including the statements, directors' reports, auditors' reports and notes attached to or intended to be read with the accounts) of the Group for the financial years ending 30 June 2013, 30 June 2014 and 30 June 2015 and the financial half-year ending 31 December 2015.

**Affiliate** means any person or entity that is directly or indirectly in control of, controlled by, or under common control with, such other entity, including but not limited to, parent or subsidiary corporations or entities.

**Announced Dividend** means the interim dividend of 2.7c per Share announced prior to the Signing Date, based on a record date of 8 March 2016 and to be paid on 6 April 2016.



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

**Asciano Group** means Asciano and each of its Subsidiaries.

**ASIC** means the Australian Securities and Investments Commission.

**ASIC Modification** means any exemptions or modifications required to be obtained by the Issuer, or agreed by the Issuer to be obtained by the Issuer, from ASIC to enable it to issue Subscription Shares in accordance with this Agreement in compliance with the Corporations Act.

**ASX** means ASX Limited (ACN 008 624 691) and the financial market operated by ASX.

**ASX Waivers** means any waivers, confirmations or approvals required to be obtained by the Issuer, or agreed by the Issuer to be obtained by the Issuer, from ASX to enable it to issue Subscription Shares in accordance with this Agreement in compliance with the Listing Rules.

**Authorisation** includes any authorisation, approval, consent, licence, permit, franchise, permission, orders, concessions, filing, registration, resolution, direction, declaration, or exemption.

**BAPS Businesses** means the entities and assets comprising the Bulk & Automotive Port Services business of the Asciano Group, and Asciano Group's 50% interest in a joint venture with ACFS Port Logistics. For the avoidance of doubt, this includes the Asciano Group's regional road and rail business, and excludes the Asciano Group's CargoLink business.

**BAPSCo** means a wholly-owned Subsidiary of Asciano which is the restructured holding company of the BAPS Businesses, to be sold to BAPS HoldCo under the BAPS Sale Agreement.

**BAPS HoldCo** means the entity to be incorporated and jointly owned by the Brookfield Consortium for the purposes of acquiring BAPSCo.

**BAPS Sale Agreement** means the agreement dated on or around 10 March 2016 entered into between, amongst others, BAPS HoldCo and Asciano pursuant to which Asciano agrees to sell to BAPS HoldCo or to a nominee of BAPS HoldCo:

- (a) all of the issued shares in BAPSCo;
- (b) its 50% interest in a joint venture with ACFS Port Logistics; and
- (c) its 50% interest in AAT (including the related shareholder loans provided by Asciano to AAT).

**Brookfield** means Brookfield Infrastructure Partners Limited as general partner of Brookfield Infrastructure Partners L.P. of 73 Front Street Hamilton, HM 12, Bermuda.

**Brookfield Consortium** means Brookfield (and certain of its affiliates), GIC Private Limited (and certain of its affiliates), British Columbia Investment Management Corporation and their consortium vehicle and Nitro Corporation Pty Limited (ACN 607 605 701).

**Business Day** means a day which is not a Saturday, Sunday or a public holiday in Sydney, Australia or Toronto, Canada.

**Capital Commitment Payment** has the meaning given in clause 7.

**CHES** has the meaning given to that term in the ASX Settlement Operating Rules.

**Claim** means actions, claims, demands, proceedings or judgments.

**Cleansing Statement** means a written notice by the Issuer to ASX pursuant to section 708A(5) of the Corporations Act meeting the requirements of section 708A(6) of the Corporations Act.

**Completion** means the completion of the subscription and issue of the Subscription Shares in accordance with the terms of this Agreement.

**Conditions Precedent** has the meaning given in clause 2.1.

**Conditions Precedent End Date** means the date that occurs 12 months after the Signing Date.

**Constitution** means the constitution of the Issuer.

**Control** has the meaning given to that term in section 50AA of the Corporations Act excluding section 50AA(4) of the Corporations Act and **Controlled** has a corresponding meaning.

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

**Director** means a director of the Issuer or any other Group Member.

**Dispose** includes:

- (a) the meaning given by the Listing Rules; and
- (b) in relation to any Escrowed Shares, to:
  - (i) sell, assign, transfer or otherwise dispose of any interest in the Escrowed Shares;
  - (ii) encumber or grant a security interest over the Escrowed Shares;
  - (iii) grant or exercise an option in respect of any Escrowed Shares;
  - (iv) do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of, or economic interest in, any of the Escrowed Shares; or
  - (v) agree to do any of those things.

**EBITDA** means earnings before interest, taxes, depreciation, and amortization.

**Effective Date** has the meaning given in the Scheme Implementation Deed.

**Encumbrance** means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, Claim, covenant, profit a prendre, easement or any other security arrangement or any other arrangement having the same effect.

**Escrowed Shares** means the Subscription Shares.

**Escrow Period** means the period commencing on the first date of issue of any of the Subscription Shares and continuing for a period of 12 months from that date.

**Fairly Disclosed** means in relation to a fact, matter or circumstance means disclosed in reasonably sufficient detail, or otherwise evident from the information, to allow a reasonable person in the position of, and with the expertise of, the Subscriber to be aware of, identify or otherwise determine the substance of the fact, matter or circumstance.

**Finance Commitment** means the A\$1.05 billion debt facilities to be provided to Ports BidCo in connection with the financing of the acquisition by Ports BidCo of the Ports Businesses, the terms of which are set out in a binding credit approved commitment letter dated on or around 10 March 2016 (as may be superseded by fully documented, long form finance documents).

**Governmental Agency** means any:

- (a) government or governmental, semi governmental or judicial entity or authority; or
- (b) minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government.

It also includes any regulatory organisation established under statute or any stock exchange.

**Group** means the Issuer and each of its subsidiaries.

**Group Member** means any member of the Group.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**GST Law** has the meaning given in section 195-1 of the GST Act.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it has had a controller (as defined in the Corporations Act) appointed or is in liquidation or provisional liquidation, under administration or wound up or has had a receiver or receiver and manager appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any event or circumstance referred to in paragraph (a), (b) or (c) of this definition occurring;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or 585 of the Corporations Act (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts as and when they fall due; or
- (h) something having a substantially similar effect to any event or circumstance referred to in paragraphs (a) to (g) of this definition happens in connection with that person under the law of any jurisdiction.

**Holding Lock** has the meaning given to that term in the Listing Rules.

**Implementation Date** has the meaning set out in the Scheme Implementation Deed.

**Listing Rules** means the official listing rules of ASX.

**Material Adverse Change** means any event, change, effect, circumstance, condition, development or occurrence, individually or in the aggregate, causing, resulting in or having (or with the passage of time likely to cause, result in or have) a material adverse effect on the financial condition, position, business, assets, operations, results or prospects of the Issuer or the Issuer and the Group Members (taken as a whole) between the Signing Date and the Settlement Date inclusive such that there is, or is likely to be, an adverse impact of greater than 10% on the Underlying EBITDA of the Issuer or the net assets of the Issuer, using the Underlying EBITDA and net assets of the Issuer for the financial year ending 30 June 2015 as the relevant reference point for testing such impact (and for the avoidance of doubt any non-recurring event, change or effect the impact of which is confined to the fiscal year in which it has occurred will not be included in Underlying EBITDA). Notwithstanding the foregoing, an event, circumstance, condition, development or occurrence resulting from:

- (a) changes in the price or trading volume of Shares on ASX (but not any fact, change, event, occurrence or effect underlying or contributing to such change in prices or trading volume);

- (b) any failure to meet analysts' projections, in and of itself (but not any fact, change, event, occurrence or effect underlying or contributing to such failure);
- (c) any changes in general Australian or global economic conditions;
- (d) any changes affecting the transports and logistics industry in Australia in general;
- (e) any event, change, effect, circumstance, condition, development or occurrence that was Fairly Disclosed to the Subscriber prior to the Signing Date; or
- (f) the acquisition of the Ports Businesses by Ports BidCo,

shall not constitute a Material Adverse Change, provided, however, that (c) and (d) not apply to the extent that any such change, effect, event, circumstance, condition, development or occurrence disproportionately impacts the Issuer and its subsidiaries as compared to a majority of other participants principally engaged in the transport and logistics industry in Australia.

**Material Adverse Effect** means a material adverse effect on:

- (a) the assets, liabilities, results of operations, condition (financial or otherwise), business, or prospects of the Group as a whole; or
- (b) the ability of the Issuer to perform its obligations under this Agreement,

but excluding any such effect to the extent it relates to any of the items in paragraphs (a) to (h) in the definition of Material Adverse Change.

**Material Contract** has the meaning given in clause 10.1(m).

**Ports BidCo** means PTLH No 1 Pty Ltd, being the proprietary company incorporated to acquire the Ports Businesses, to be initially owned 50% by the Issuer and 50% by Brookfield (or its nominated affiliate) and to be operated as a joint venture between the Issuer and Brookfield.

**Ports Businesses** means the entities and assets comprising the Terminals & Logistics business of the Asciano Group. For the avoidance of doubt, this includes the Asciano Group's CargoLink business, and excludes the Asciano Group's regional road and rail business, 50% interest in a joint venture (being ACFS Port Logistics) and 50% interest in AAT.

**Ports Shareholders Agreement** means the agreement dated on or around 10 March 2016 entered into between the Issuer (or its Related Body Corporate), Nitro TC No 1 Pty Ltd as trustee for Nitro Holdings Trust No 1 (**Brookfield Consortium SPV**) and Ports BidCo which sets out the rights and obligations of the Issuer and Brookfield Consortium SPV as joint venture parties in respect of Ports BidCo.

**Ports Sale Agreement** means the agreement dated on or around 10 March 2016 between, amongst others, Ports BidCo and Asciano pursuant to which Asciano agrees to sell, and Ports BidCo has agreed to purchase, all of the issued shares in the Subsidiary of Asciano which is the holding company of the Ports Businesses.

**Prescribed Occurrence** means in relation to a person, the events set out in section 652C of the Corporations Act but substituting that person for "target" provided that any issue of Shares permitted by or contemplated by this Agreement will not constitute a Prescribed Occurrence.

**Prescribed Threshold** means 9.9% of the issued share capital of the Issuer.

**Qube Consortium** means the consortium comprising the Issuer, Canada Pension Plan Investment Board, Global Infrastructure Management LLC (on behalf of itself and its managed funds and clients) and China Investment Corporation, or their nominees (as applicable).

**Qube Debt** means the A\$200 million debt facilities to be provided to the Issuer in connection with the financing of the acquisition by Ports BidCo of the Ports Businesses.

**Qube Transaction Announcements** means the announcements by the Issuer relating to the

proposed Scheme, the subscription by the Subscriber for the Subscription Shares and the Rights Issue dated on or around 10 March 2016, the final drafts of which have been provided to the Subscriber prior to execution of this Agreement.

**Related Body Corporate** has the meaning given in the Corporations Act, applied so that references to 'subsidiary' in that definition are interpreted as applying to the definition of Subsidiary in this Agreement.

**Restructure Event** means an event described in clause 11.3.

**Rights Issue** means a fully underwritten accelerated non-renounceable entitlement offer to raise A\$500 million at an offer price representing a discount of not more than 10% to the theoretical ex rights price of each Share as at the last closing price of Shares on the ASX prior to announcement of the entitlement offer, as conducted by the Issuer in accordance with the Corporations Act and as set out in the Qube Transaction Announcements.

**Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between Asciano and its shareholders, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to by Asciano, the Qube Consortium and Brookfield.

**Scheme Conditions** means the conditions precedent to the Scheme, as set out in clause 3.1 of the Scheme Implementation Deed.

**Scheme Implementation Deed** means the scheme implementation deed dated on or around 10 March 2016 between, amongst others, the Issuer and Asciano.

**Scheme Booklet** means the scheme booklet prepared by Asciano setting out the terms of the Scheme.

**Settlement Date** means:

- (a) the second Business Day after the Effective Date; or
- (b) such other date agreed by the parties (acting reasonably and in good faith) to facilitate the implementation of the Scheme.

**Shares** means ordinary shares in the capital of the Issuer.

**Signing Date** means the date on which this Agreement is executed by both parties.

**Sophisticated and Professional Investor** means the categories of investors described in sections 708(8) and 708(11) of the Corporations Act.

**Specified Clauses** means clauses 1, 2, 9 and 14.

**Subscription Price** means \$2.14 per Subscription Share, provided that:

- (a) to the extent that any dividend other than the Announced Dividend is paid by the Issuer between the Signing Date and the Settlement Date, the Subscription Price shall be adjusted downwards by the amount of the relevant dividend per Share;
- (b) the Subscription Price may be adjusted as agreed between the parties resulting from a Restructure Event; and
- (c) the Subscription Price shall not take into account the Capital Commitment Payment.

**Subscription Shares** means 143,018,818 ordinary shares in the Issuer, subject to adjustment in accordance with clause 6.1(c), provided that the number of Subscription Shares shall not exceed the Prescribed Threshold.

**Subsidiary** has the meaning given in the Corporations Act, but an entity will also be taken to be a subsidiary of an entity if it is Controlled by that entity and:

- (a) a trust may be a subsidiary, for the purpose of which a unit or other beneficial interest will be regarded as a share; and
- (b) an entity may be a subsidiary of a trust if it would have been a subsidiary if that trust were a body corporate.

**Takeover Bid** has the meaning given to that term in the Corporations Act.

**Total Proceeds** means the amount calculated by multiplying the total number of Subscription Shares by the Subscription Price.

**Underlying EBITDA** means the 'underlying EBITDA' as set out in the Accounts.

**Voting Power** has the meaning given in section 610 of the Corporations Act.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after *includes*, *including*, *for example*, or similar expressions, does not limit what else might be included.
- (c) The following rules apply unless the context requires otherwise.
  - (i) The singular includes the plural, and the converse also applies.
  - (ii) A gender includes all genders.
  - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
  - (v) A reference to a clause, Schedule or Annexure is a reference to a clause of, or Schedule or Annexure to, this Agreement.
  - (vi) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
  - (vii) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document, and includes the recitals, and Schedules and Annexures to that agreement or document.
  - (viii) 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 or statutory instrument issued under it.
  - (ix) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
  - (x) A reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
  - (xi) A reference to a day means a day in the jurisdiction where the relevant obligation is to be performed.



- (xii) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.

### 1.3 Statements on the basis of knowledge or belief

Any statement made by a party on the basis of its knowledge and belief or awareness is made on the basis that the party has, in order to establish that the statement is true and not misleading in any respect:

- (a) made all reasonable inquiries of the officers, managers, employees and other persons with responsibility for the matters to which the statement relates; and
- (b) if those inquiries would have prompted a reasonable person to make further inquiries, made those further inquiries,

and that, as a result of those inquiries, the party has no reason to doubt that the statement is true and not misleading in any respect.

## 2 Conditions Precedent

### 2.1 Conditions Precedent

This Agreement (other than the Specified Clauses) will not bind the parties and Completion will not proceed unless and until the following conditions (the **Conditions Precedent**) are fulfilled or waived in accordance with this Agreement:

- (a) **(ACCC)** prior to the Settlement Date, the ACCC has notified the Subscriber in writing that it does not intend or propose to object to or intervene in the acquisition of the Subscription Shares by the Subscriber without conditions which are unacceptable to the Subscriber or the Issuer (each acting reasonably and in good faith), pursuant to section 50 of the *Competition and Consumer Act 2010* (Cth), and that notice has not been withdrawn, revoked or materially adversely amended before the Settlement Date;
- (b) **(ASIC and ASX approval)** ASIC and ASX issue or provide all reliefs, waivers, confirmations, exemptions, consents or approvals, and do all other acts, necessary to implement the issue of and subscription for Subscription Shares, and such reliefs, waivers, confirmations, exemptions, consents, approvals or other acts (as the case may be) have not been withdrawn, suspended, or revoked before the Settlement Date;
- (c) **(Scheme Conditions)** each of the Scheme Conditions has been satisfied or waived in accordance with clause 6.1(d);
- (d) **(Finance Commitment)** there is no termination or withdrawal of the Finance Commitment prior to the Settlement Date;
- (e) **(Rights Issue)** the Rights Issue has been announced and has settled in accordance with its terms prior to the Settlement Date; and
- (f) **(Ports Shareholders Agreement)** the Ports Shareholders Agreement has been entered into by the parties to it and has not been terminated or rescinded prior to the Settlement Date.

### 2.2 Parties must co-operate

Each party must co-operate with the other and do all things reasonably necessary to procure that the Conditions Precedent are fulfilled as soon as reasonably possible, and in any event on or before the Conditions Precedent End Date.

### 2.3 Specific obligations of co-operation

Without limiting the generality of clause 2.2:

- (a) each party must make all necessary and appropriate applications and supply all necessary and appropriate information for the purpose of enabling the Conditions Precedent to be fulfilled;
- (b) no party may withdraw or procure the withdrawal of any application made or information supplied under paragraph (a) of this clause 2.3;
- (c) no party may take any action that would or would be likely to prevent or hinder the fulfilment of the Conditions Precedent; and
- (d) each party must:
  - (i) supply to the other party copies of all applications made and all information supplied for the purpose of enabling the Conditions Precedent to be fulfilled;
  - (ii) keep the other party informed in a timely manner of the status of any discussions or negotiations with relevant third parties regarding the Conditions Precedent; and
  - (iii) promptly notify the other party on becoming aware of the fulfilment of any Condition Precedent or of any Condition Precedent becoming incapable of being fulfilled.

### 2.4 Waiver

- (a) The Conditions Precedent in clauses 2.1(a) and 2.1(b) cannot be waived.
- (b) The Condition Precedent in clause 2.1(c) can only be waived by the written agreement of the Issuer and the Subscriber.
- (c) The Condition Precedent in clauses 2.1(d), 2.1(e) and 2.1(f) are for the benefit of the Subscriber and may only be waived by the Subscriber.

### 2.5 Termination before Completion

- (a) Subject to clauses 2.5(b) and 2.5(c), the Issuer or Subscriber may terminate this Agreement before Completion if any of the Conditions Precedent are not fulfilled, or the parties agree that they are incapable of being fulfilled, on or before the Conditions Precedent End Date.
- (b) A party may only terminate under this clause 2.5 if they have complied with clauses 2.2 and 2.3 and subject to giving two Business Days' notice to the other party.
- (c) If this Agreement is terminated under this clause 2.5, this Agreement (other than the Specified Clauses) will be null and void and of no effect.

## 3 Agreement to Subscribe

### 3.1 Subscription

The Subscriber will subscribe, and the Issuer will issue to the Subscriber, the Subscription Shares on the Settlement Date for the Subscription Price.

### 3.2 Agreement to serve as application

This Agreement serves as an application by the Subscriber for the allotment of the Subscription Shares on the Settlement Date and accordingly it will not be necessary for the Subscriber to provide a separate (additional) application on or prior to the Settlement Date. The Subscriber



consents to become a member of the Issuer and agrees to be bound by the Constitution of the Issuer upon the issue of the Subscription Shares.

#### 4 Rights Attaching to Subscription Shares

The Subscription Shares will rank equally in all respects with the existing ordinary shares of the Issuer on issue when the Subscription Shares are issued.

#### 5 Settlement

##### 5.1 Obligations of the Issuer

On the Settlement Date, the Issuer must:

- (a) **(issue Subscription Shares)** issue the Subscription Shares to the Subscriber (or its nominees or custodians, as directed in writing by the Subscriber no less than 3 Business Days prior to the Settlement Date), and the Subscriber acknowledges that the Subscription Shares may not be registered in its CHESS account until after close of business on the Settlement Date;
- (b) **(electronic delivery)** ensure that all of the Subscription Shares when issued are received by the Subscriber (or its designee or nominee) by electronic registration to the Subscriber's (or its designee or nominee's) CHESS account (or such other electronic system which provides for the recording, delivery and transfer of title by way of electronic entries, as may be required by the Subscriber by notice to the Issuer no less than 5 Business Days prior to the Settlement Date) in accordance with the ASX Settlement Operating Rules and procedures of CHESS; and
- (c) **(cleansing statement and Appendix 3B)** execute and lodge with ASX in accordance with all applicable Laws a Cleansing Statement and Appendix 3B in respect of the Subscription Shares.

##### 5.2 Obligations of the Subscriber

On the Settlement Date, the Subscriber must pay, or cause to be paid, the Subscription Price to the Issuer in Australian dollars to the account notified by the Issuer to the Subscriber no less than 3 Business Days prior to the Settlement Date.

##### 5.3 Simultaneous actions

In respect of the Settlement Date:

- (a) the obligations of the parties under this Agreement are interdependent; and
- (b) unless otherwise stated, all actions required to be performed by a party on the Settlement Date are taken to have occurred simultaneously on the Settlement Date.

#### 6 Undertakings

##### 6.1 The Issuer's undertakings

The Issuer undertakes in favour of the Subscriber that:

- (a) **(third party challenge)** it will promptly (and in any event within 1 Business Day) notify the Subscriber if at any time before the Settlement Date the Issuer becomes aware of any third party objecting to, challenging, interfering with or obstructing (or proposing to object to, challenge interfere with or obstruct) any of the transactions contemplated by this Agreement;

- (b) **(reorganisation of capital)** if during the period from the Signing Date to the Settlement Date, if the Issuer considers it necessary to reorganise its capital, it will ensure that the Subscribers' rights under this Agreement are protected so that:
- (i) the Subscription Shares will be taken to mean the number of securities required for the Subscriber to hold the Prescribed Threshold at Completion;
  - (ii) the rights attached to the Subscription Shares after any reorganisation will be the same as the rights attached to the Subscription Shares under this Agreement; and
  - (iii) the Subscriber's rights under this Agreement will otherwise be unaffected by any such reorganisation;
- (c) **(adjustment to Subscription Shares)** to the extent that:
- (i) immediately following the last issue of Shares under the Rights Issue, the number of Subscription Shares is not equal to the Prescribed Threshold; or
  - (ii) the Issuer undertakes any further issues as permitted by clause 6.1(k)(iii) or (iv) during the period from the Signing Date until the Settlement Date,
- then the number of Subscription Shares for which the Subscriber is subscribing under this Agreement shall be adjusted so that it is equal to such number of Shares as would equate to the Prescribed Threshold at Completion (rounded down in each case to the nearest whole number of Shares);
- (d) **(amendments to Scheme Conditions, amount payable by the Issuer under the Scheme or Ports Sale Agreement)** it will not consent to:
- (i) the amendment, variation or waiver of any Scheme Condition without the prior written consent of the Subscriber; or
  - (ii) the amendment or variation of any of the material terms of the Scheme Implementation Deed where that amendment or variation increases the consideration which the Issuer is required to fund or otherwise adversely affects the Issuer, without the prior written consent of the Subscriber; or
  - (iii) the amendment, variation or waiver of any material term of the Ports Sale Agreement or (during the period from the Signing Date to the Settlement Date) the Ports Shareholders Agreement without the prior written consent of the Subscriber,

such consent in each case not to be unreasonably withheld or delayed unless the amendment, variation or waiver (as applicable) could reasonably be expected to materially adversely alter the value to the Subscriber of its investment in the Subscription Shares. For the purposes of this clause, the parties agree and acknowledge that the following matters could reasonably be expected to materially alter the value to the Subscriber of its investment in the Subscription Shares:

- (iv) any amendment, variation or waiver of a Scheme Condition relating to an ACCC approval related to the acquisition of the Ports Businesses;
- (v) any amendment, variation or waiver of any of the terms of the Scheme or the Ports Sale Agreement that:
  - (A) materially increases the price payable by the Issuer for the underlying businesses or the size of any liabilities to be assumed (including shareholder loans); or

- (B) decreases the percentage ownership of Ports BidCo to be held by the Issuer; or
- (vi) any amendment, variation or waiver of a term to the Ports Shareholders Agreement that adversely affects the Issuer's rights in respect of:
  - (A) the right to appoint directors to Ports BidCo under clause 3.2 of the Ports Shareholders Agreement;
  - (B) the right to appoint a chairperson of the board of Ports BidCo from time to time in accordance with clause 3.4 of the Ports Shareholders Agreement;
  - (C) the right to nominate the initial CEO of Ports BidCo, as defined in, and for the purposes of, clause 4.2 of the Ports Shareholders Agreement;
  - (D) the right to be consulted in relation to the appointment or removal of the CEO and CFO of Ports BidCo, as defined in, and for the purposes of, clause 4.3 of the Ports Shareholders Agreement;
  - (E) its ability to participate in, or exercise its rights in respect of, the first right of offer as set out in clause 9 of the Ports Shareholders Agreement;
  - (F) its ability to participate in any new issue of Securities (as defined in the Ports Shareholders Agreement) by Ports BidCo pursuant to clause 12 of the Ports Shareholders Agreement;
  - (G) its ability to participate in any new issue of Default Securities issued by Ports BidCo in order to prevent the occurrence of a Default Funding Situation (each as defined in the Ports Shareholders Agreement) pursuant to clause 14 of the Ports Shareholders Agreement;
  - (H) Part A of Schedule 2 of the Ports Shareholders Agreement; or
  - (I) Part B of Schedule 2 of the Ports Shareholders Agreement;
- (e) **(Scheme Booklet)** it will obtain the prior written consent of the Subscriber to the form and content of any statement in the Scheme Booklet that relates to the subscription for the Subscription Shares by the Subscriber (such consent not to be unreasonably withheld or delayed) and any material amendment or supplement to such statements;
- (f) **(notifications)** it will notify the Subscriber of:
  - (i) any breach of any representation, warranty or undertaking given by the Issuer under this Agreement;
  - (ii) any proposed amendments of the type referred to in clause 6.1(d) and (e); or
  - (iii) the occurrence of any of the events described in clauses 11.1 and 11.3 or the non-satisfaction of any of the conditions in clause 2.1,promptly after it becomes aware of any such matter;
- (g) **(ASIC notifications)** it will give notice to the Subscriber no later than 2 Business Days after becoming aware of any of the following:
  - (i) ASIC issuing an order (including an interim order) under section 739 of the Corporations Act;
  - (ii) ASIC holding a hearing under section 739(2) of the Corporations Act;
  - (iii) an application being made by ASIC for an order under Part 9.5 in relation to the transactions contemplated by this Agreement;

- (iv) ASIC commencing any investigation or hearing under Part 3 of the ASIC Act in relation to the transactions contemplated by this Agreement;
- (v) any person gives a notice under section 733(3) or any person who has previously consented to the inclusion of its name in the Scheme Booklet withdraws that consent; or
- (vi) any person gives a notice under section 730 in relation to the Scheme Booklet;
- (h) **(correspondence with ASIC, ASX or ACCC)** to the extent permitted by the terms of such communication, it will promptly provide the Subscriber with copies of any communication from ASX, ASIC, ACCC or any other Governmental Agency (or any of their respective advisers) in relation to issues or approvals that would prevent or restrict the Issuer's ability to perform its obligation to issue the Subscription Shares to the Subscriber or to acquire (via Ports BidCo) a 50% interest in the Ports Businesses and give the Subscriber a reasonable opportunity to comment on any such correspondence from the Issuer (or any of its advisers) to ASIC, ASX, ACCC or any other Governmental Agency (as relevant) (or any of their respective advisers) in relation to any such issues or approvals from the date of this Agreement until Completion.
- (i) **(no breach)** prior to Completion, no Group Member and no Director will commit or be involved in any activity which constitutes a breach of:
  - (i) the Corporations Act;
  - (ii) the Listing Rules;
  - (iii) the Constitution of the Issuer or the constitution of any other Group Member;
  - (iv) any legally binding requirement of ASIC or ASX (including any ASIC Modification or ASX Waiver); or
  - (v) any other applicable law, to the extent that such breach would materially adversely affect the Issuer or the value of the Subscription Shares;
- (j) **(no unauthorised variations)** it will not, before Completion:
  - (i) vary any term of the Constitution or the composition of its board of directors; or
  - (ii) alter its share capital (other than as described in the Scheme Implementation Deed),without the prior consent of the Subscriber to the terms of the variation or alteration (such consent not to be unreasonably withheld or delayed);
- (k) **(further issues)** without the prior consent of the Subscriber, during the period from the Signing Date to the Settlement Date inclusive, it will not cancel, redeem, issue, agree to issue, offer for subscription or grant any option over, or indicate in any way that it may or will issue, agree to issue, offer for subscription or grant any option over, any shares, options or other securities of the Issuer (or securities convertible or exchangeable into equity of the Issuer) or permit any Group Member to do any of the foregoing, or do anything economically equivalent to any of the foregoing, other than as permitted under this Agreement, provided that nothing in this clause 6.1(k) prevents:
  - (i) the Rights Issue;
  - (ii) the issue of the Subscription Shares (and for the avoidance of doubt, any adjustment pursuant to clause 6.1(c));
  - (iii) the Issuer issuing securities pursuant to:
    - (A) any employee incentive scheme (as defined in the Listing Rules); or

- (B) any dividend reinvestment plan; or
  - (iv) the issue of securities on the conversion or exercise of convertible securities, rights or options:
    - (A) issued under a plan or scheme referred to in clause 6.1(k)(iii); or
    - (B) in existence as at the date of this Agreement.
- (l) **(conduct of business)** during the period from the date of this Agreement until the Settlement Date, it, and each Group Member will carry on its business in the ordinary course and will not, other than as disclosed to the Subscriber prior to the date of this Agreement or in respect of the transactions contemplated by this Agreement or the Scheme:
  - (i) dispose of or charge, or agree to dispose of or charge, the whole or any part of its business or its property (except in the ordinary course of business);
  - (ii) materially increase its net debt, other than an increase to the extent required to fund the Issuer's obligations under the AAT Option Agreement provided the aggregate consideration payable under the AAT Option Agreement by the Issuer does not exceed \$150 million;
  - (iii) vary in a material respect any term of any contract, deed or other agreement which is material to the making of an informed investment decision in relation to the Subscription Shares; or
  - (iv) pay any dividend, other than (as applicable):
    - (A) the Announced Dividend; and
    - (B) a final dividend payable in respect of the period to 30 June 2016,without the prior written consent of the Subscriber (such consent not to be unreasonably withheld or delayed);
- (m) **(keep Subscriber informed)** during the term of this Agreement and until Completion, it will keep the Subscriber promptly and fully informed of all material developments relating to the transactions contemplated by this Agreement, the Scheme Implementation Deed or any Material Adverse Effect; and
- (n) **(debt funding arrangements)** during the term of this Agreement and until Completion, it will not amend or vary any material terms of the debt funding arrangements relating to the acquisition of the Ports Businesses (as disclosed to the Subscriber prior to the Signing Date), including the Finance Commitment and the Qube Debt, in a manner which is materially adverse to the Issuer without the prior written consent of the Subscriber (such consent not to be unreasonably withheld or delayed). For the purposes of this clause, the parties agree and acknowledge that the Subscriber will not withhold or delay its consent where the proposed terms of the debt funding arrangements are consistent with then-prevailing market terms for similar debt funding arrangements.

## 6.2 The Subscriber's undertakings

- (a) The Subscriber will use all reasonable efforts to co-operate with the Issuer and its representatives in:
  - (i) preparing all documents to be lodged by the Issuer with ASX in connection with the execution, delivery and performance of this Agreement and the transactions contemplated by it; and
  - (ii) timely lodgement of all such documents.

- (b) The Subscriber will use all reasonable efforts to take, or cause to be taken, all other action and do, or cause to be done, all other things necessary or appropriate to consummate the transactions completed by this Agreement.
- (c) The Subscriber undertakes in favour of the Issuer that, to the extent permitted by the terms of such communication, it will promptly provide the Issuer with copies of any communication from the ACCC or any other Governmental Agency (or any of their respective advisers) in relation to issues or approvals that would prevent or restrict the Subscriber from subscribing for the Subscription Shares and give the Issuer a reasonable opportunity to comment on any such correspondence from the Subscriber (or any of its advisers) to the ACCC or any other Governmental Agency (as relevant) (or any of their respective advisers) in relation to any such issues or approvals from the date of this Agreement until Completion.

### 6.3 AAT Option Agreement

The Issuer must promptly notify the Subscriber of all material discussions, negotiations or developments under or in connection with the AAT Option Agreement, including in relation to the option exercise price and status of conditions precedent under that agreement.

## 7 Capital Commitment Payment

- (a) The Issuer must pay to the Subscriber a non-refundable capital commitment payment equal to 2% of the Total Proceeds, payable by way of reduction to the aggregate Subscription Price payable in respect of the Subscription Shares (the **Capital Commitment Payment**).
- (b) For the avoidance of doubt:
  - (i) the Capital Commitment Payment is payable only if Completion occurs and the Subscriber subscribes for the Subscription Shares in accordance with clause 3.1; and
  - (ii) the Subscriber may set-off any amounts payable under clause 7(a) against any payment obligation owed by the Subscriber to the Issuer (including under clause 5.2).

## 8 Sell Down Following Completion

- (a) In the event that the Subscriber notifies the Issuer that it is seeking to sell all or a portion of its holding of Shares through one or more on-market transactions, the parties agree to co-operate in good faith and use reasonable endeavours to achieve an outcome that is mutually acceptable to both parties.
- (b) If the Subscriber seeks to sell all or a portion of its holding of Shares to a strategic investor, the Subscriber must consult with the Issuer and seek the Issuer's views on such proposal.

## 9 No Public Announcements

- (a) Except as set out in the Qube Transaction Announcements and Scheme Booklet, neither party will make any public announcements or statements to the media in relation to this Agreement or the subscription for the Subscription Shares by the Subscriber except in accordance with the prior written approval of the other, which approval will not be unreasonably withheld or delayed.
- (b) Nothing in this clause 9 prevents any disclosure by either party to the extent that it is required by law, regulation, legal process, order of any Governmental Agency or the rules

of an applicable securities exchange and the Issuer will only be required to comply with clause 9(a) if and to the extent that compliance would not, in its reasonable opinion, be likely to result in it breaching its continuous disclosure obligations, provided that in each case the disclosing party has provided a copy of the relevant disclosure to the other party prior to lodgement and taken into account any comments of the other party in good faith and acting reasonably.

## 10 Representations and Warranties

### 10.1 Representations and Warranties by the Issuer

The Issuer represents and warrants to the Subscriber that each of the following statements is true, accurate and not misleading as at each of the Signing Date and the Settlement Date:

- (a) **(status)** It is a body corporate validly existing under the laws of its place of incorporation or establishment.
- (b) **(corporate power)** It has the corporate power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement.
- (c) **(corporate action)** It has taken all necessary corporate action to authorise the entry into and performance of this Agreement and to carry out the transactions contemplated by this Agreement.
- (d) **(binding obligation)** This Agreement is its valid and binding obligation.
- (e) **(Issuer shareholder approval)** Other than pursuant to the Scheme, the Issuer is not required to obtain under the Corporations Act or the Listing Rules the approval of its shareholders in relation to the acquisition of the Ports Businesses by Ports BidCo, the acquisition of AAT following any exercise of the option under the AAT Option Agreement (if applicable) or the issue of the Subscription Shares to the Subscriber.
- (f) **(Subscription Shares)**
  - (i) the Subscription Shares will be validly issued;
  - (ii) the Subscription Shares will rank equally in all respects with the existing ordinary shares of the Issuer on issue;
  - (iii) the Subscription Shares will have the rights set out in the Constitution;
  - (iv) the Issuer has the ability to issue the Subscription Shares free from all Encumbrances (other than those in the Constitution), and applicants for the Subscription Shares will receive good, valid and incontestable title to the Subscription Shares free from any Encumbrance (other than those in the Constitution); and
  - (v) the Subscription Shares will have no restriction on their issue or transfer other than in the manner contemplated by this Agreement.
- (g) **(accuracy and completeness)** All information relating to the Issuer and the Group and the Issuer and/or the Group's operations provided to the Subscriber or its advisers in connection with the proposed investment by the Subscriber in the Issuer as contemplated by this Agreement was prepared in good faith for the purpose of informing the Subscriber about the Issuer and the Subscription Shares and no information about the Issuer has been knowingly or recklessly omitted from the information provided to the Subscriber or its advisers that is, in the reasonable opinion of the Issuer, material to an investment in the Issuer.



- (h) **(no misleading or deceptive conduct)** The Issuer has not engaged in, and will not engage in, conduct that is misleading or deceptive or which is likely to mislead or deceive in connection with the Scheme or this Agreement.
- (i) **(disclosure compliance)** It has complied with all its disclosure requirements under the Corporations Act and the Listing Rules and there is no material information or circumstance which the Issuer is not obliged to notify ASX about, pursuant to Listing Rule 3.1 and it has not withheld any information in reliance on the exemption in Listing Rule 3.1A other than in respect of the transactions contemplated by this Agreement or the Scheme.
- (j) **(Subscription Price)** There is no agreement to issue any Shares or securities of the Issuer after the Signing Date at a price that is less than the Subscription Price, other than where such agreement has been notified to the Subscriber prior to the Signing Date or is a permitted issue under clause 6.1(k).
- (k) **(compliance with law)** It is not, and no Group Member is, in breach of any provision of:
  - (i) the Corporations Act;
  - (ii) any other law to which it is subject or any order of any Governmental Agency that is binding on it, to the extent that such breach would materially adversely affect the Issuer or the value of the Subscription Shares;
  - (iii) the Listing Rules (except where compliance has been waived, or as modified, by ASX);
  - (iv) its respective constitution or any other constituent organisational document;
  - (v) any legally binding requirement of ASIC or ASX; or
  - (vi) any other undertaking or instrument or Authorisation or court or administrative order binding on it (or its Affiliates), to the extent that such breach would materially adversely affect the Issuer or the value of the Subscription Shares.
- (l) **(no contravention)** None of:
  - (i) the entry into this Agreement;
  - (ii) the performance by the Issuer of its obligations under this Agreement; or
  - (iii) the carrying out of any transaction contemplated by this Agreement,will result in a breach of any provisions of:
  - (A) any agreement, deed, trust, document or other arrangement;
  - (B) any applicable law; or
  - (C) any judgment of any Court,binding on the Issuer or any Group Member or any of their respective assets, in each case to the extent that such breach would materially adversely affect the Issuer or the value of the Subscription Shares.
- (m) **(material contracts)** To the best of the Issuer's knowledge and belief and except as could not reasonably be expected to result in a Material Adverse Effect:
  - (i) all contracts entered into by the Issuer and Group Members that are material for the carrying on of the Group's business (**Material Contracts**) are valid and enforceable in accordance with their terms;
  - (ii) entry into this Agreement will not result in any person having the right (whether actual or contingent) to terminate any Material Contract;



- (iii) each Group Member is not in breach under any Material Contract and nothing has occurred which, is, or with giving of notice, lapse of time, satisfaction of some other condition, or any combination of these, constitutes an event which causes or enables the expenditure or acceleration of expenditure of any payment to be made under, or the enforcement, termination or rescission of, any Material Contract; and
  - (iv) no Group Member has not received notice of cancellation, termination or failure to renew any Material Contract.
- (n) **(Governmental Agencies licences)** Except as disclosed pursuant to clause 10.1(i), each Group Member holds all Authorisations from all Governmental Agencies that are necessary or material to the conduct of the business now operated by them and all of these Authorisations are in full force and effect and not liable to be revoked or not renewed except where the failure to hold, revocation or non-renewal would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.
- (o) **(no litigation)** Except as disclosed in the Accounts for the financial half-year ended 31 December 2015 or as could not reasonably be expected to result in a Material Adverse Effect, the Issuer is not aware of any facts or circumstances likely to lead to any prosecution, litigation or arbitration involving the Issuer or any person for whom the Issuer may be liable, and has not been threatened with any prosecution, litigation or arbitration involving the Issuer or any person for whom the Issuer may be liable. The Issuer is not involved in any proceeding before or investigation by any Governmental Agency or other body and no such proceeding or investigation is pending or threatened against the Issuer or any person for whom it may be liable (except as would not individually or in the aggregate have a Material Adverse Effect).
- (p) **(no insolvency)** Neither the Issuer nor any member of the Group is Insolvent and there is no act which has occurred or any omission made which may result in the Issuer or any Group Member becoming Insolvent.
- (q) **(money laundering)** The operations of each member of the Group are and have been conducted at all times in compliance with all financial recordkeeping and reporting requirements of the applicable money laundering statutes of all jurisdictions, the rules and regulations made thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Agency (collectively, the **Money Laundering Laws**) and no action, suit or proceeding by or before any court or Governmental Agency, authority or body or any arbitrator involving any Group Member with respect to the Money Laundering Laws is pending or, to the best knowledge of the Issuer, threatened.
- (r) **(corrupt practices)** No Group Member and, to the best knowledge of the Issuer, no director, officer, employee, or Affiliate of the Issuer or any other Group Member:
  - (i) has used any corporate funds for any unlawful contribution, gift, unlawful entertainment or other unlawful expense relating to political activity;
  - (ii) has made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds of any Group Member; or
  - (iii) has made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment,

in each case, in violation of any applicable laws, including but not limited to the United States Foreign Corrupt Practices Act of 1977, the United Kingdom Bribery Act 2010 or the Australian Criminal Code Act 1995 (Cth).

- (s) **(environmental laws)** Except as disclosed pursuant to clause 10.1(i) and, as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect:
- (i) no Group Member is in violation of any environmental laws;
  - (ii) no Group Member has received any Claim concerning the environment, whether made by a Governmental Agency or otherwise;
  - (iii) no circumstances exist which might give rise to an environmental Claim being issued by a Governmental Agency or otherwise;
  - (iv) each Group Member has always previously complied with all environmental laws;
  - (v) each Group Member has in place, and is complying with the terms of, systems and processes designed to ensure their future compliance with all environmental laws and those systems and processes have been designed with professional skill, care and diligence;
  - (vi) each Group Member has received all permits, licences or other approvals required of them under applicable environmental laws to conduct their respective businesses and is in compliance with all terms and conditions of any permit, licence or approval; and
  - (vii) to the knowledge of the Issuer, there are no current or anticipated costs or liabilities of any member of the Group associated with environmental laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with environmental laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties).
- (t) **(labour)** Except as could not reasonably be expected to result in a Material Adverse Effect, no labour, industrial or trade action, claim, bargaining period problem, dispute, slowdown, work stoppage or disturbance involving employees of any Group Member or with any trade union, exists, or is pending, or, to the knowledge of the Issuer, is imminent or threatened and the Issuer is not aware of any circumstances existing which might give rise to one of these disputes; nor is the Issuer aware of any labour, industrial or trade problem, dispute, slowdown, work stoppage or disturbance involving employees of any of Group's principal suppliers, customers or contractors, except for, in each case, those disputes or disturbances which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.
- (u) **(occupational health and safety)** Except as could not reasonably be expected to result in a Material Adverse Effect, no Group Member has received any Claim, improvement notice, or is subject to any prosecution or investigation concerning a breach or alleged breach of occupational health and safety laws or standards, whether made by a Governmental Agency or otherwise and no Group Member is in breach of any occupational health and safety laws or standards and the Group is not aware of any safety issues or non-compliance with occupational health and safety laws or standards which could reasonably, individually or in the aggregate, be expected to result in a Material Adverse Effect and each Group Member has implemented policies and procedures sufficient to fulfil their work health and safety obligations and are in compliance with all occupational health and safety laws and standards.

- (v) **(property)** Except as could not reasonably be expected to result in a Material Adverse Effect, each Group Member has or has rights to all real and personal property necessary to conduct their respective businesses. Each Group Member has good and marketable title to all personal property owned by it, in each case free and clear of all Encumbrances and defects (except as would not individually or in the aggregate have a Material Adverse Effect); and any real property and buildings held under lease by a Group Member are held by them under valid, subsisting and enforceable leases (except as would not individually or in the aggregate have a Material Adverse Effect).
- (w) **(consents/approvals)** Except for the admission of the Subscription Shares to the Official List of ASX and the satisfaction of the Conditions Precedent, no Authorisation, registration or qualification of or with any Governmental Agency or any other person is required for the Issuer to perform its obligations under this Agreement.
- (x) **(capitalisation)** As at the Signing Date, the issued capital of the Issuer is 1,060,575,767 Shares and 22,121,040 unlisted options under the Issuer's long term incentive plan. As at the Signing Date and the Settlement Date, other than the transactions contemplated by this Agreement or the Bid:
  - (i) the Issuer and/or the Group Members have no outstanding obligations or intent to issue, redeem or cancel any shares or options in the Issuer, and there exist no rights to acquire capital or voting rights in the Issuer; and
  - (ii) there are no Prescribed Occurrences in relation to the Issuer or any of the Group Members.
- (y) **(insurance)**
  - (i) Each Group Member is a beneficiary of policies of insurance issued by insurers of recognised financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged.
  - (ii) All policies of insurance insuring a Group Member or their respective businesses, assets, employees and officers are in full force and effect in all material respects.
  - (iii) Each Group Member is in compliance with the terms of those policies in all material respects.
  - (iv) There are no Claims by any Group Member under any such policy as to which any insurance company is denying liability or defending under a reservation of rights clause which if required to be paid by the Issuer will, or is likely to, have a Material Adverse Effect.
- (z) **(taxation)** Each member of the Group has filed all tax returns that are required to be filed or has requested extensions thereof (except in any case in which the failure to file would not individually or in the aggregate have a Material Adverse Effect) and has paid all taxes required to be paid by it and any other assessment, fine or penalty levied against it, to the extent that any of the foregoing is due and payable, except for any assessment, fine or penalty that is currently being contested in good faith (except as would not individually or in the aggregate have a Material Adverse Effect).

The representations and warranties by the Issuer in this clause 10.1 are continuing obligations of the Issuer and survive the issue of the Subscription Shares and do not merge on the Settlement Date.

## 10.2 Representations and Warranties by the Subscriber

The Subscriber represents and warrants to the Issuer that each of the following statements is true, accurate and not misleading as at each of the Signing Date and the Settlement Date:

- (a) **(status)** It is a body corporate validly existing under the laws of its place of incorporation or establishment.
- (b) **(corporate power)** It has the corporate power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement.
- (c) **(corporate action)** It has taken all necessary corporate action to authorise the entry into and performance of this Agreement and to carry out the transactions contemplated by this Agreement.
- (d) **(binding obligation)** This Agreement is its valid and binding obligation.
- (e) **(no contravention)** Neither the entry into nor performance by it of this Agreement nor any transaction contemplated under this Agreement violates in any material respect any provision of any judgment binding on it, its constituent documents, any law or any document, agreement or other arrangement binding on it or its assets.
- (f) **(Sophisticated or Professional Investor)** It is:
  - (i) a Sophisticated or Professional Investor and a “wholesale client” for the purposes of section 761G of the Corporations Act, and the issue of the Subscription Shares to it does not require a prospectus under Chapter 6D of the Corporations Act;
  - (ii) it is a person to whom the Subscription Shares may lawfully be offered and issued in compliance with applicable laws without lodgement, registration or other formality or filing with or by a Governmental Agency; and
  - (iii) it is outside the United States and is subscribing for the Subscription Shares in an “offshore transaction” (as defined in Rule 902(h) of Regulation S under the U.S. Securities Act of 1933 (**Regulation S**)) and is not purchasing the Shares as a result of any form of “general solicitation” or “general advertising” (within the meaning of Rule 502(c) of Regulation D under the Securities Act) or as a result of any “directed selling efforts” (within the meaning of Rule 902(c) of Regulation S).
- (g) **(Subscription Shares)** On the Settlement Date and immediately prior to the issue of the Subscription Shares, the Subscriber will have no Voting Power in the Issuer.

## 10.3 Disclosure

The representations and warranties in clause 10.1 are given subject to and are qualified by, and the liability of the Issuer in respect of any breach of the representations and warranties in clause 10.1 (including in respect of any indemnity in respect of such breach under clause 12) will be reduced or extinguished (as the case may be) to the extent that the breach arises in connection with:

- (a) the transactions contemplated by this Agreement or the Scheme;
- (b) any matter or information which has been disclosed in the materials provided to the Subscriber or its advisers by or on behalf of the Issuer prior to the Signing Date; and/or
- (c) any matter or information which has been disclosed by the Issuer to the ASX prior to the Signing Date.

## 11 Termination and Restructure Events

### 11.1 Termination by the Subscriber

The Subscriber may immediately terminate this Agreement at any time by notice given to the Issuer, without cost or liability to itself, so that it is relieved of all its obligations under this Agreement if any of the following events occurs before the Settlement Date:

- (a) **(breach)** the Issuer fails to perform or observe any of its material obligations under this Agreement (and expressly includes the Issuer breaching the undertaking set out in clauses 6.1(c) or (d));
- (b) **(termination of transaction)** the Issuer has:
  - (i) announced it no longer intends to acquire 50% of the Ports Businesses, unless the Issuer still intends to acquire a percentage of the Ports Businesses and the Subscriber has consented to the variation of the Issuer's percentage ownership in accordance with clause 6.1(d); or
  - (ii) the Ports Sale Agreement or the Ports Shareholders Agreement has been terminated, rescinded or varied in manner which is materially adverse to the Issuer, in each case without the prior written consent of the Subscriber (acting reasonably);
- (c) **(fraud)** the Issuer or any of its directors or officers engage, or have engaged in any fraudulent conduct or activity whether or not in connection with the transactions contemplated in this Agreement;
- (d) **(prosecution)** any of the following occur:
  - (i) a director of the Issuer is charged with an indictable offence in relation to their conduct as a director of the Issuer;
  - (ii) any Governmental Agency commences any public action against the Issuer or any of its directors in their capacity as a director of that company, or announces that it intends to take such action; or
  - (iii) any director of the Issuer is disqualified from managing a corporation under Part 2D.6 of the Corporations Act; or
- (e) **(listing)** the Issuer ceases to be admitted to the official list of the ASX.

### 11.2 Termination by the Issuer

The Issuer may immediately terminate this Agreement at any time by notice given to the Subscriber, without cost or liability to itself, so that it is relieved of all its obligations under this Agreement (expressly including under clause 12) if:

- (a) the Issuer has sought the Subscriber's consent under clause 6.1(d) to an amendment, variation or waiver in relation to a matter the subject of clause 6.1(d) and the Subscriber has not provided its consent to that amendment, variation or waiver;
- (b) each member of the Qube Consortium and Brookfield Consortium other than the Issuer has agreed or consented to the making of that amendment, variation or waiver, and the Issuer has informed the Subscriber that the other members of the Qube Consortium and Brookfield Consortium have so agreed or consented; and
- (c) following paragraph (a), the Subscriber does not provide its consent under clause 6.1(d) to such amendment, variation or waiver within the period specified by the Issuer.

### 11.3 Restructure Events

If any of the following events occur between the Signing Date and the Settlement Date, the parties must work together in good faith to agree amendments to the definition of 'Subscription Price' in clause 1.1 and any other related or consequential amendments to this Agreement:

- (a) **(Material Adverse Change)** there is a Material Adverse Change;
- (b) **(representations and warranties)** any representation and warranty made by the Issuer is, or becomes, untrue or incorrect in a materially adverse respect;
- (c) **(Scheme Booklet disclosures misleading)** a statement relating to the Issuer contained in the Scheme Booklet is or has become false, misleading or deceptive in a material particular (including, without limitation, misleading representations within the meaning of section 769C(1) of the Corporations Act), or a matter relating to the Issuer required by all applicable laws (including the Corporations Act, ASIC Regulatory Guide 60 and the Listing Rules) to be included in the Scheme Booklet is omitted from the Scheme Booklet,

in each case to the extent necessary to reflect the change in the valuation of the Issuer arising from that event, occurrence, representation, statement or omission (and, for the avoidance of doubt, including whether the Material Adverse Change is ongoing or non-recurring).

### 11.4 Termination by the Issuer

The Issuer may terminate its obligations under this Agreement any time prior to the issue of any Subscription Shares by notice to the Subscriber if:

- (a) the Issuer is in any way prevented by any regulatory authority from proceeding, with the issue of the Subscription Shares; or
- (b) the Subscriber is placed into insolvency, an order for the winding up of the Subscriber has been made or threatened, the Subscriber has been placed into administration or the Issuer's issue of the Subscription Shares would be a breach of any applicable law, regulation or ordinance.

## 12 Indemnity

- (a) Subject to paragraph (b) and clause 14.4, the Issuer indemnifies the Subscriber against each claim, action, proceeding, judgment, damage, costs, loss, expense or liability (including legal costs on a full indemnity basis) incurred or suffered by or brought by or made or recovered against the Subscriber in connection with or arising out of any material breach of clause 6.1 (The Issuer's Undertakings) or clause 10.1 (Representations and Warranties by the Issuer).
- (b) In respect of any claim, action, proceeding, judgment, damage, costs, loss, expense or liability the subject of an indemnity under clause, any amount recoverable by the Subscriber shall be reduced to the extent that the Subscriber has failed to take all reasonable steps to mitigate the relevant liability, loss, damage, costs and expenses.

## 13 Escrow

### 13.1 Escrow Restrictions

- (a) Except as set out in clause 13.1(b) – (g), during the Escrow Period, the Subscriber must not Dispose of, or agree or offer to Dispose of, the Escrowed Shares.
- (b) To enable the Subscriber to accept an offer under a Takeover Bid in relation to the Escrowed Shares, to enable the Holder to tender any of its Escrowed Shares into a bid acceptance facility established in connection with a Takeover Bid or to enable the



Escrowed Shares to be transferred or cancelled as part of an acquisition or merger by scheme of arrangement under Part 5.1 of the Corporations Act, the Issuer must remove the Holding Lock on the Escrowed Shares during the Escrow Period if any of the following conditions are met:

- (i) in the case of a Takeover Bid, holders of at least half of the Shares that are not Escrowed Shares that are the subject of the Takeover Bid have accepted the Takeover Bid;
- (ii) in the case of a bid acceptance facility established in connection with a Takeover Bid, holders of at least half of the Shares that are not Escrowed Shares that are the subject of the Takeover Bid have either accepted the Takeover Bid or tendered (and not withdrawn) their Shares into the bid acceptance facility; and
- (iii) in the case of a merger or acquisition by scheme of arrangement under Part 5.1 of the Corporations Act, the scheme of arrangement has received all necessary approvals, including all such necessary approvals by shareholders of the Issuer and courts,

provided that, if for any reason any or all Escrowed Shares are not transferred or cancelled in accordance with a Takeover Bid (including because the Takeover Bid does not become unconditional) or scheme of arrangement described in this clause 13.1(b), then the Subscriber agrees that the restrictions applying to the Escrowed Shares under this clause 13 will continue to apply and without limiting the foregoing, the Holding Lock will be re-applied to all Escrowed Shares not so transferred or cancelled.

- (c) During the Escrow Period, the Subscriber may deal in any of its Escrowed Shares to the extent the dealing is required by applicable law (including an order of a court of competent jurisdiction).
- (d) During the Escrow Period, the Subscriber may Dispose of any of its Escrowed Shares in connection with any equal access share buyback or capital return or capital reduction made in accordance with the Corporations Act.
- (e) Notwithstanding any condition to the contrary in this clause 13, during the Escrow Period, the Subscriber may encumber any (or all) of its Escrowed Shares to a bona fide third party financial institution (**Financial Institution**) as security for a loan, hedge or other financial accommodation provided that:
  - (i) the encumbrance does not in any way constitute a direct or indirect disposal of the economic interests, or decrease an economic interest, that the Subscriber has in any of its Escrowed Shares; and
  - (ii) no Escrowed Shares are to be transferred or delivered to the Financial Institution or any other person in connection with the encumbrance. Any agreement with a Financial Institution must provide that the Escrowed Shares are to remain in escrow and subject to the terms of this clause 15 as if the Financial Institution were a party to this clause 13.
- (f) Notwithstanding any condition to the contrary in this clause 13, during the Escrow Period, the Subscriber may transfer (in one or more transactions) any or all Escrowed Shares to an Affiliate or Related Body Corporate of the Subscriber provided such Affiliate or Related Body Corporate transferee agrees to be bound by the terms and conditions of this clause 13 by entering into such further agreements or deeds as the Issuer may reasonably require.
- (g) If the Subscriber becomes aware:

- (i) that a dealing in or Disposal of any Escrowed Shares has occurred, or is likely to occur, during the Escrow Period; or
- (ii) of any matter which is likely to give rise to a dealing in or Disposal of any Escrowed Shares during the Escrow Period,

it must notify the Issuer as soon as practicable after becoming aware of the dealing or the matters giving rise to the dealing, providing full details.

### 13.2 Warranties

- (a) Each of the warranties and representations in this clause 13.2 is given in favour of the Issuer, as at:
  - (i) the Signing Date; and
  - (ii) at all times until expiry of the Escrow Period.
- (b) The warranties and representations in this clause 13.2 are given in respect of any and all Escrowed Shares which the Subscriber holds from time to time during the Escrow Period, including as a result of a permitted dealing in accordance with clause 13.1.
- (c) The Subscriber warrants and represents and warrants that before the Escrow Period begins, it has not done, or omitted to do, any act which would breach clause 13 if done or omitted during the Escrow Period.
- (d) A breach of any of the warranty in this clause 13.2 constitutes a breach for the purposes of clause 13.5.

### 13.3 Holding Lock

- (a) Subject to clause 13.3(b), the Subscribers agree to the application of a Holding Lock to the Escrowed Shares.
- (b) The Issuer will apply a Holding Lock to the Escrowed Shares upon each issue of Escrowed Shares and may only remove the Holding Lock with respect to the Escrowed Shares if permitted under clause 13.3(c).
- (c) Upon request by the Subscriber, the Issuer must remove the Holding Lock with respect to Escrowed Shares in order to facilitate a Disposal that is permitted under clause 13.1.
- (d) The Company must remove the Holding Lock with respect to Escrowed Shares on the Business Day after the end of the Escrow Period.

### 13.4 Permitted Dealings with the Escrowed Shares

Except as expressly provided for in clause 13.1, nothing in this clause 13 restricts the Subscriber from dealing with the Escrowed Shares or exercising rights attaching to, or afforded to the holder of, the Escrowed Shares, including without limitation by:

- (a) exercising any voting rights attaching to the Escrowed Shares;
- (b) receiving or being entitled to any dividend, return of capital or other distribution attaching to the Escrowed Shares; and
- (c) receiving or participating in any rights or bonus issue in connection with the Escrowed Shares.

### 13.5 Breach

- (a) If it appears to the Issuer that the Subscriber may breach the provisions of this clause 13, the Issuer may take any steps necessary to prevent the breach, or to enforce the provisions of this clause 13, as soon as it becomes aware of the potential breach.



- (b) If the Subscriber breaches this clause 13, each of the following applies:
  - (i) the Issuer may take the steps necessary to enforce the provisions of this clause 13, or to rectify the breach; and
  - (ii) the Issuer may refuse to acknowledge, deal with, accept or register any sale, assignment, transfer or conversion of any of the Escrowed Shares. This is in addition to other rights and remedies of the Issuer.
- (c) The parties agree that damages would be an insufficient remedy for breach of clause 13.1 and the Subscriber agrees that the Issuer is entitled to seek and obtain an injunction or specific performance to enforce the Subscriber's obligations under clause 13.1 (as applicable) without proof of actual damage and without prejudice to any of its other rights or remedies.

## 14 General

### 14.1 Governing Law and Jurisdiction

This Agreement is governed by the laws of New South Wales, Australia. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

### 14.2 Notices

Any notice, demand, consent approval or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or, in the case of email, set out the full name and position or title of the sender);
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand, fax or email to the address, fax number or email address below or the address, fax number or email address last notified by the intended recipient to the sender after the date of this Agreement:

to the Issuer:

**Qube Holdings Limited**

Attention: William Hara

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

Fax No: +61 2 9080 1999

Email: william.hara@qube.com.au

with a copy (such  
copy not  
constituting  
notice) to:

Attention: Andrew Bullock

Address: Level 37, 2 Park Street,  
Sydney NSW 2000

Fax No: +61 2 9263 4111

Email: abullock@gtlaw.com.au

to the Subscriber:	<p><b>Canada Pension Plan Investment Board</b>          Attention: R. Scott Lawrence, Managing Director, Head of Relationship Investments</p> <p>Address: One Queen Street East, Suite 2500, Toronto, ON, Canada M5C 2W5</p> <p>Fax No: +1-416-868-8690</p> <p>Email: slawrence@cppib.com</p>
with a copy (such copy not constituting notice) to:	<p>Attention: Patrice Walch-Watson, Senior Managing Director, General Counsel &amp; Corporate Secretary</p> <p>Fax No: +1-416-868-4760</p> <p>Email: pwalchwatson@cppib.com</p>

- (c) will be conclusively taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);
  - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of the recipient and indicating that the transmission has been made without error; and
  - (iv) in the case of email, on the earlier of:
    - (A) when the sender receives an automated message from the email system of the intended recipient confirming delivery; and
    - (B) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or at a time that is later than 5pm in the place to which the Notice is sent, it will be conclusively taken to have been duly given or made at the start of business on the next business day in that place.

### 14.3 Assignment

- (a) Subject to clause 14.3(b), the Subscriber cannot assign, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of the Issuer.
- (b) The Subscriber may freely and without restriction assign or transfer its rights and obligations under this Agreement to any of its Related Bodies Corporate by no less than 5 Business Days' written notice to the Issuer.

### 14.4 Indirect or consequential loss excluded

- (a) To the maximum extent permitted by law, neither party is liable for or with respect to any indirect or consequential loss, damage to reputation, loss of opportunity, loss of profit, financing costs or any increase in operating costs, special, exemplary or punitive damage

or any liability suffered by a party that cannot reasonably be considered to arise naturally from a breach of this Agreement or the events giving rise to the liability, in each case arising from or in connection with this Agreement.

- (b) Notwithstanding anything in this Agreement, the Issuer will not be liable for any loss under this Agreement to the extent that such loss relates to the participation by the Subscriber or one of its Affiliates as a member of the Qube Consortium.

#### **14.5 No waiver**

- (a) No acquiescence, waiver or other indulgence granted by either party to any other party will in any way discharge or relieve that other party from any of its other obligations under this Agreement.
- (b) A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

#### **14.6 Costs and duty**

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All duty (including any fines, penalties and interest) payable on or in connection with this Agreement and any instrument executed under or any transaction evidenced by this Agreement must be borne equally by the parties.

#### **14.7 Severability**

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

#### **14.8 Extent of obligations**

If any payment under this Agreement becomes void by any statutory provision or otherwise, the obligations of the party that made the payment will be taken not to have been discharged in respect of that payment and the parties will be restored to the rights which each respectively would have had if that payment had not been made.

#### **14.9 Entire agreement**

This Agreement contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersedes all earlier Conduct by or between the parties in connection with its subject matter. Neither party has relied on or is relying on any other Conduct in entering into this Agreement and completing the transactions contemplated by it.

#### **14.10 Amendment**

This Agreement may be amended only by another agreement executed by all the parties.

#### **14.11 Further assurances**

Each party must do anything necessary or desirable (including executing agreements and documents) to give full effect to this Agreement and the transactions contemplated by it.

## 14.12 Counterparts

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

## 15 GST

### 15.1 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST Law will have the same meaning in this clause.

### 15.2 Recovery of GST

If GST is payable, or notionally payable, by a party (**Supplier**) on a supply it makes under or in connection with this Agreement, the party providing the consideration for that supply (**Recipient**) must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice (or an adjustment note, as applicable), the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

### 15.3 Liability for penalties

If the Recipient fails to make the payment of an amount in accordance with this clause 18, the Recipient must pay to the Supplier (or the representative member liable for the GST on the relevant supply under the GST Act) on demand the amount of any loss, cost expense, penalty, fine, interest, fee or other amount to which the Supplier (or the representative member liable for such amount,) becomes liable as a direct result of the Recipient's failure to make such payment. It will not be a defence to any claim against the Recipient that the Supplier (or the representative member liable for such amount) has failed to mitigate damages by paying an amount of GST when it fell due under the GST Law.

### 15.4 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it will be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

### 15.5 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties. The supplier will promptly issue an adjustment note to the recipient in respect of the adjustment event.

### 15.6 Survival

This clause will not merge upon completion and will continue to apply after expiration or termination of this Agreement.

### 15.7 Revenue exclusive of GST

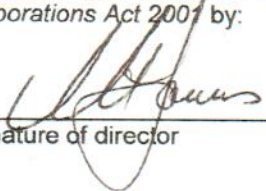
Any reference in this Agreement to value, sales, revenue or a similar amount (**Revenue**), is a reference to that Revenue exclusive of GST.

**15.8 Cost exclusive of GST**

Any reference in this Agreement to a cost, expense or other similar amount (**Cost**), is a reference to that Cost exclusive of GST.

**Executed as an Agreement**

Signed by **Qube Holdings Limited**  
in accordance with section 127 of the  
*Corporations Act 2001* by:

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

**Maurice James**  
\_\_\_\_\_  
Name of director (please print)

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

**William Hara**  
\_\_\_\_\_  
Name of director/secretary (please print)

Signed for and on behalf of **Canada  
Pension Plan Investment Board**  
by its authorised representatives:

\_\_\_\_\_  
Eric Wetlaufer, Senior Managing Director &  
Global Head of Public Market Investments

\_\_\_\_\_  
R. Scott Lawrence, Managing Director, Head  
of Relationship Investments

**Executed as an Agreement**

Signed by **Qube Holdings Limited**  
in accordance with section 127 of the  
*Corporations Act 2001* by:

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

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

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

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

Signed for and on behalf of **Canada  
Pension Plan Investment Board**  
by its authorised representatives:

  
\_\_\_\_\_  
Eric Wetlaufer, Senior Managing Director &  
Global Head of Public Market Investments

  
\_\_\_\_\_  
R. Scott Lawrence, Managing Director, Head  
of Relationship Investments