



13 August 2018

ASX ANNOUNCEMENT

**APA Group (ASX: APA)**

**(also for release to APT Pipelines Limited (ASX: AQH))**

# APA AND CKI CONSORTIUM ENTER INTO IMPLEMENTATION AGREEMENT

## Summary

- APA Group (ASX:APA) has entered into a conditional Implementation Agreement (**Implementation Agreement**) with CK Infrastructure Holdings Limited (**CKI**), CK Asset Holdings Limited (**CKA**), Power Assets Holdings Limited (**PAH**) and CKM Australia Bidco Pty Ltd (**Bidder**) (CKA, CKI and PAH together the **CKI Consortium**) under which Bidder (a wholly owned subsidiary of CKA) will acquire all of the stapled securities in APA under trust schemes (**Schemes**).
- If the Schemes are implemented, APA Securityholders will receive A\$11.00 cash per APA stapled security.
- The transaction does not affect APA's final distribution for the 2018 financial year, which the Board expects to be 24.0 cents per stapled security, and which is expected to be paid on 12 September 2018.
- If the Schemes are implemented at any time after 31 December 2018, APA Securityholders will receive an additional distribution of 4.0 cents per APA stapled security for each full month in calendar 2019 which elapses prior to implementation of the Schemes (up to, and including, March 2019).
- The transaction value represents a 30.5%<sup>1</sup> premium to the 5 day volume weighted average price of APA stapled securities, a 31.4%<sup>1</sup> premium to the 1 month volume weighted average price of APA stapled securities, an FY2017A EV/EBITDA multiple of 15.3x<sup>2</sup> and an FY2018F EV/EBITDA multiple of 15.0x<sup>2</sup>.
- The APA Directors unanimously recommend the transaction in the absence of a superior proposal and subject to an Independent Expert concluding (and continuing to conclude) that the Schemes are fair and reasonable and in the best interests of APA Securityholders.
- Depending on the progress of regulatory approvals, a meeting of APA Securityholders is targeted to be held in late November 2018 to consider the Schemes, with implementation and payment to APA Securityholders targeted to occur in mid December 2018.
- Implementation of the Schemes is subject to certain conditions outlined in the Implementation Agreement and summarised below within 'Summary of key terms and conditions of the Schemes'.

## Comments from APA Chairman, Mr Michael Fraser

*"Since listing in 2000, APA has been focussed on delivering value and growing returns for its Securityholders. A dollar invested in APA at listing, with distributions reinvested, would have grown approximately 18.3 times<sup>3</sup>. The Board's priority at all times has been to assess and make business and investment decisions that are in the best interests of our Securityholders. The offer made by the CKI Consortium is compelling. It is an all cash offer, representing a premium of over 30 per cent to APA's recent trading prices and gives certainty of value to Securityholders. In the absence of a superior proposal and subject to an Independent Expert concluding (and continuing to conclude) that the Schemes*

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<sup>1</sup> Based on the 5 trading days volume weighted average price from 5 June to 12 June 2018 of A\$8.43 per APA stapled security and 1 calendar month volume weighted average price from 13 May to 12 June 2018 of A\$8.37 per APA stapled security. 12 June 2018 is the day prior to the announcement of the CKI Consortium being granted due diligence.

<sup>2</sup> Based on 1,179,893,848 APA stapled securities on issue, APA net debt as at 31 December 2017 of A\$9,460 million, APA FY2017 EBITDA of A\$1,470 million for the FY2017A multiple and Bloomberg consensus for APA's FY2018F EBITDA of A\$1,497 million as at 10 August 2018 for the FY2018F multiple.

<sup>3</sup> Based on total securityholder return from 13 June 2000 to 10 August 2018, measured as the capital appreciation of an investment in APA stapled securities over the period, assuming 100% reinvestment of distributions on the ex-distribution date and adjusted for capital management actions. Source: Bloomberg.

*are fair and reasonable and in the best interests of APA Securityholders, the Board unanimously recommends that Securityholders vote in favour of the Schemes, and all APA Directors intend to vote their own securityholdings in favour of the Schemes."*

### **Transaction overview**

On 13 June 2018 APA announced it had received an unsolicited, indicative and non-binding proposal from the CKI Consortium to acquire all of the stapled securities in APA through trust schemes.

APA today announces that following due diligence by CKI, APA, the CKI Consortium and Bidder have now entered into the Implementation Agreement under which Bidder (a wholly owned subsidiary of CKA) will acquire all of the stapled securities in APA under the Schemes.

If the Schemes are implemented, APA Securityholders will receive A\$11.00 cash per stapled security.

The transaction does not affect APA's final distribution for the 2018 financial year, which the Board expects to be 24.0 cents per stapled security, and which is expected to be paid on 12 September 2018.

The Schemes are targeted to be implemented by mid December 2018. However, if the Schemes are implemented at any time after 31 December 2018, APA Securityholders will receive an additional distribution of 4.0 cents per APA stapled security for each full month in calendar 2019 which elapses prior to implementation of the Schemes (up to, and including, March 2019). The end date for approval of the Schemes is 31 March 2019.

A summary of the Schemes is set out below and a copy of the Implementation Agreement, including all applicable conditions to implementation of the Schemes, is attached to this announcement.

### **Unanimous recommendation by the APA Directors**

The APA Directors unanimously consider the Schemes to be in the best interests of APA Securityholders, and recommend that APA Securityholders vote in favour of the Schemes, in the absence of a superior proposal and subject to an Independent Expert concluding (and continuing to conclude) that the Schemes are fair and reasonable and in the best interests of APA Securityholders. Subject to those qualifications, to the extent entitled, each APA Director intends to vote, or procure the voting of, all the stapled securities held or controlled by them in favour of the Schemes.

### **Benefits of the Schemes**

The APA Directors believe the proposal to be compelling for APA Securityholders for the following reasons:

- **Premium:** The value of A\$11.00 per stapled security represents an attractive premium of:
  - 30.5% premium to the 5 day volume weighted average price of A\$8.43<sup>4</sup>
  - 31.4% premium to the 1 month volume weighted average price of A\$8.37<sup>4</sup>
  - 35.1% premium to the 3 month volume weighted average price of A\$8.14<sup>4</sup>
- **Acquisition multiple:** The offer represents an FY2017A EV/EBITDA multiple of 15.3x<sup>5</sup> and an FY2018F EV/EBITDA multiple of 15.0x<sup>5</sup>
- **Certainty of value:** The 100% cash consideration provides APA Securityholders with certainty of value and the opportunity to realise their investments in APA stapled securities, in full.

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<sup>4</sup> Based on 5 trading days from 5 June to 12 June 2018, 1 calendar month from 13 May to 12 June 2018 and 3 calendar months from 13 March to 12 June 2018. 12 June 2018 is the day prior to the announcement of the CKI Consortium being granted due diligence.

<sup>5</sup> Based on 1,179,893,848 APA stapled securities on issue, APA net debt as at 31 December 2017 of A\$9,460 million, APA FY2017 EBITDA of A\$1,470 million for the FY2017A multiple and Bloomberg consensus for APA's FY2018F EBITDA of A\$1,497 million as at 10 August 2018 for the FY2018F multiple.

## Summary of key terms and conditions of the Schemes

The Implementation Agreement sets out the terms on which the Schemes will be implemented. The Schemes are subject to several conditions, including:

- approval of the Australian Competition and Consumer Commission and the Foreign Investment Review Board;
- an Independent Expert opining that the Schemes are fair and reasonable and in the best interests of APA Securityholders;
- no "material adverse change" or "prescribed events" occurring in relation to APA;
- CKA shareholder approval;
- APA Securityholder approval; and
- Court approval.

The CKI Consortium will also seek other shareholder approvals and regulatory approval to enable CKI and PAH to participate in the CKI Consortium. However, obtaining these approvals is not a condition to the Schemes. Therefore, Bidder will remain a wholly owned subsidiary of CKA unless and until these additional shareholder approvals are obtained. If obtained, Bidder will become part owned by each of CKA, CKI and PAH.

The Implementation Agreement includes customary deal protection and exclusivity arrangements, including "no shop", "no talk", "notification" and "matching" obligations, with the "no talk" restriction subject to the APA Directors' fiduciary obligations.

A break fee of A\$130 million will be payable by APA in certain circumstances, a lesser break fee of A\$50 million will be payable by APA in other circumstances and a reverse break fee of A\$50 million will be payable by the CKI Consortium in certain circumstances.

Subject to the regulatory approval and CKA shareholder approval conditions being met, a meeting of APA Securityholders is targeted to be held in late November to consider the Schemes, with implementation and payment to APA Securityholders targeted to occur by mid December 2018.

For further details, please refer to the copy of the Implementation Agreement attached to this announcement.

## Independent Expert

APA has appointed Grant Samuel as Independent Expert to prepare a report opining on whether the Schemes are fair and reasonable and in the best interests of APA Securityholders. The Independent Expert's report will be included in the explanatory memorandum to be sent to APA Securityholders, as described below.

## Explanatory memorandum, indicative timetable and next steps

APA Securityholders **do not need to take any action at the present time.**

It is targeted that APA Securityholders will receive the explanatory memorandum for the Schemes before the end of October. This will include a more detailed explanation of the Schemes, including the reasons for the APA Board's recommendation, along with a copy of the Independent Expert's report.

A meeting of APA Securityholders is targeted to be held in late November to consider the Schemes, with implementation and payment to APA Securityholders targeted to occur by mid December 2018.

In order for the Schemes to be implemented, APA Securityholders who are eligible to vote must approve each resolution at the APA Securityholder meeting to be convened to consider the Schemes, by the requisite majorities. The matters to be considered at the APA Securityholder meeting include resolutions to amend the Australian Pipeline Trust and APT Investment Trust constitutions to effect the Schemes, which must be approved by eligible APA Securityholders representing at least 75% of the stapled securities voted at the meeting (in person or by proxy).

Further information about the APA Securityholder meeting will be set out in the explanatory memorandum.

An indicative timetable for the Schemes is set out below:

<b>Event</b>	
Lodge Explanatory Memorandum and Independent Expert's report with ASIC for review	Late September 2018
First Court Hearing Date	Mid October 2018
Dispatch of Explanatory Memorandum	Mid-Late October 2018
Scheme Meeting	Late November 2018
Second Court Hearing	Early December 2018
Effective Date	Early December 2018
Record Date for Schemes	Early-Mid December 2018
Implementation Date	Mid December 2018

Depending on the progress of the regulatory approvals, the timetable may be delayed.

#### **Further information**

APA Securityholders can obtain further information by contacting the APA Group Investor Information Line on 1800 992 312 (toll free within Australia) or +61 1800 992 312 (outside Australia).

For further information, please contact:

#### **Investor enquiries:**

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#### **Nevenka Codevelle**

Company Secretary

Australian Pipeline Limited

## **About APA Group (APA)**

APA is Australia's leading energy infrastructure business, owning and/or operating in excess of \$20 billion of energy infrastructure assets. Its gas transmission pipelines span every state and territory on mainland Australia, delivering approximately half of the nation's gas usage. APA has direct management and operational control over its assets and the majority of its investments. APA also holds ownership interests in a number of energy infrastructure enterprises including SEA Gas Pipeline, SEA Gas (Mortlake) Partnership, Energy Infrastructure Investments and GDI Allgas Gas Networks.

APT Pipelines Limited is a wholly owned subsidiary of Australian Pipeline Trust and is the borrowing entity of APA Group.

For more information visit APA's website, [apa.com.au](http://apa.com.au)

## **About the CKI Consortium**

### **CK Infrastructure Holdings Limited (CKI)**

CKI is a publicly listed company listed on the Main Board of the Stock Exchange of Hong Kong Limited with diversified investments in energy infrastructure, transportation infrastructure, water infrastructure, and other infrastructure related businesses. It operates a global business, with assets in the United Kingdom, Australia, New Zealand, Continental Europe, Hong Kong, mainland China and North America. In 2017, the United Kingdom and Australia contributed over 80% of CKI's effective net profit after tax. It has a market capitalisation of approximately A\$26 billion. CK Hutchinson Holdings Limited holds a 71.9% interest in CKI, with the balance of the share register largely comprised of global institutional investors.

### **CK Asset Holdings Limited (CKA)**

CKA has diverse capabilities with activities encompassing property development and investment, hotel and serviced suite operation, property and project management, joint ventures in infrastructure and utility asset operation and aircraft leasing. CKA is listed on the HKEx, with a market capitalisation of approximately A\$37 billion.

### **Power Assets Holdings Limited (PAH)**

PAH is a global investor in energy and utility-related businesses, with interests in the generation of thermal and renewable power, the transmission of electricity, gas and oil, as well as the distribution of electricity and gas. PAH is listed on the HKEx with a market capitalisation of approximately A\$21 billion. CKI is the largest shareholder of PAH, holding approximately 38.0% of the issued shares of PAH.

## **Forward looking information**

This release contains certain forward-looking statements. The words "anticipate", "believe", "continue", "expect", "project", "forecast", "estimate", "likely", "intend", "objectives", "outlook", "should", "could", "may", "will", "target", "plan", "guidance" and other similar expressions are intended to identify forward-looking statements. Indications of, and guidance on, future earnings and financial position, distributions and performance are also forward-looking statements as are statements regarding APA's future developments. Such forward-looking statements are not guarantees of future performance and involve known and unknown risks, uncertainties and other factors, many of which are beyond the control of APA, its officers, employees, agents and advisers, that may cause actual results to differ materially from those expressed or implied in such statements. There can be no assurance that actual outcomes will not differ materially from these statements. There are usually differences between forecast and actual results because events and actual circumstances frequently do not occur as forecasted and their differences may be material. Investors should not place undue reliance on forward-looking statements. Neither APA nor any other person, gives any representation, warranty, assurance, nor will guarantee that the occurrence of the events expressed or implied in any forward-looking statement will actually occur. To the maximum extent permitted by law, APA and each of its respective advisers, affiliates, related entities, directors, officers, partners, employees and agents disclaim any responsibility for the accuracy or completeness of any forward-looking statements whether as a result of new information, future events or results or otherwise. APA disclaims any responsibility to update or revise any forward-looking statement to reflect any change in APA's financial position, status or affairs or any change in the events, conditions or circumstances on which a statement is based, except as required by law.

# Implementation Agreement

Dated 12 AUGUST 2018

Australian Pipeline Limited (ABN 99 091 344 704) in its capacity as responsible entity of Australian Pipeline Trust (ARSN 091 678 778) ("**APT**")

Australian Pipeline Limited (ABN 99 091 344 704) in its capacity as responsible entity of APT Investment Trust (ARSN 115 585 441) ("**APTIT**")

CKM Australia Bidco Pty Ltd (ACN 627 690 608) ("**Bidder**")

CK Infrastructure Holdings Limited ("**CKI**")

CK Asset Holdings Limited ("**CKA**")

Power Assets Holdings Limited ("**PAH**")

**King & Wood Mallesons**

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# Implementation Agreement

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# Agreement

## Details

Parties	APT, APTIT, Bidder, CKI, CKA and PAH	
<b>APT</b>	Name	Australian Pipeline Limited (ABN 99 091 344 704) in its capacity as responsible entity of Australian Pipeline Trust (ARSN 091 678 778)
	Address	Level 25, 580 George Street SYDNEY NSW 2000
	Email	<a href="mailto:company.secretary@apa.com.au">company.secretary@apa.com.au</a>  (with a copy delivered by email to <a href="mailto:stephen.minns@au.kwm.com">stephen.minns@au.kwm.com</a> and <a href="mailto:will.heath@au.kwm.com">will.heath@au.kwm.com</a> )
	Attention	Nevenka Codevelle, General Counsel & Company Secretary
<b>APTIT</b>	Name	Australian Pipeline Limited (ABN 99 091 344 704) in its capacity as responsible entity of APT Investment Trust (ARSN 115 585 441)
	Address	Level 25, 580 George Street SYDNEY NSW 2000
	Email	<a href="mailto:company.secretary@apa.com.au">company.secretary@apa.com.au</a>  (with a copy delivered by email to <a href="mailto:stephen.minns@au.kwm.com">stephen.minns@au.kwm.com</a> and <a href="mailto:will.heath@au.kwm.com">will.heath@au.kwm.com</a> )
	Attention	Nevenka Codevelle, General Counsel & Company Secretary
<b>Bidder</b>	Name	CKM Australia Bidco Pty Ltd
	ACN	627 690 608
	Formed in	Victoria, Australia
	Address	Level 33, 101 Collins Street, Melbourne, Victoria, Australia 3000
	Email	<a href="mailto:eirene.yeung@ckah.com">eirene.yeung@ckah.com</a> , <a href="mailto:victor.luk@cki.com.hk">victor.luk@cki.com.hk</a> and <a href="mailto:alexng@powerassets.com">alexng@powerassets.com</a>  with a copy delivered by email to <a href="mailto:Richard.Kriedemann@allens.com.au">Richard.Kriedemann@allens.com.au</a> and

[Wendy.Rae@allens.com.au](mailto:Wendy.Rae@allens.com.au))

Attention Victor Luk, Group General Counsel, CK Infrastructure Holdings Limited

Eirene Yeung, Member of Executive Committee and Company Secretary, CK Asset Holdings Limited

Alex Ng, Group Legal Counsel and Company Secretary, Power Assets Holdings Limited

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<b>CKI</b>	Name	CK Infrastructure Holdings Limited
	Address	12/F Cheung Kong Center, 2 Queen's Road, Central, Hong Kong
	Email	victor.luk@cki.com.hk  (with a copy delivered by email to <a href="mailto:Richard.Kriedemann@allens.com.au">Richard.Kriedemann@allens.com.au</a> and <a href="mailto:Wendy.Rae@allens.com.au">Wendy.Rae@allens.com.au</a> )
	Attention	Victor Luk, Group General Counsel

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<b>CKA</b>	Name	CK Asset Holdings Limited
	Address	7 <sup>th</sup> Floor, Cheung Kong Center, 2 Queen's Road, Central, Hong Kong
	Email	eirene.yeung@ckah.com  (with a copy delivered by email to <a href="mailto:Richard.Kriedemann@allens.com.au">Richard.Kriedemann@allens.com.au</a> and <a href="mailto:Wendy.Rae@allens.com.au">Wendy.Rae@allens.com.au</a> )
	Attention	Eirene Yeung, Member of Executive Committee and Company Secretary

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<b>PAH</b>	Name	Power Assets Holdings Limited
	Address	Rooms 1913-1914, 19/F, Hutchison House, 10 Harcourt Road, Central, Hong Kong
	Email	<a href="mailto:alexng@powerassets.com">alexng@powerassets.com</a>  (with a copy delivered by email to <a href="mailto:Richard.Kriedemann@allens.com.au">Richard.Kriedemann@allens.com.au</a> and <a href="mailto:Wendy.Rae@allens.com.au">Wendy.Rae@allens.com.au</a> )
	Attention	Alex Ng, Group Legal Counsel and Company Secretary

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**Governing law** New South Wales

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<b>Date of agreement</b>	See Signing page
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<b>Recitals</b>	A	The Target is a stapled group listed on ASX (ASX: APA), comprising APT and APTIT.
	B	The parties are proposing to proceed with the Proposal under which Bidder will acquire all of the Target Securities on the terms and conditions of this document.
	C	At the request of Bidder, Target RE intends to propose the Proposal and issue the Explanatory Memorandum to the Target Securityholders on the terms and conditions of this document.
	D	Bidder and Target RE have agreed to undertake certain steps to enable the Proposal to be proposed, approved and implemented subject to, and in accordance with, this document.
	E	As at the date of this document, Bidder is a wholly-owned Subsidiary of CKA. It is intended that CKI will, directly or indirectly through a Subsidiary, subscribe for, or otherwise acquire, shares in Bidder if the Relevant Approvals with respect to CKI are obtained. It is intended that PAH will, directly or indirectly through a Subsidiary, subscribe for, or otherwise acquire, shares in Bidder if the Relevant Approvals with respect to PAH are obtained.
	F	The Guarantors (acting severally, each in its Relevant Proportion) have agreed to guarantee Bidder's obligations under this document, subject to, and in accordance with, this document.

# Agreement

## General terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

**10% Holder** means a foreign resident entity (with the meaning given in section 14-210 of Subdivision 14-D) that holds an indirect Australian real property interest (within the meaning given in section 855-25 of the *Income Tax Assessment Act 1997* (Cth)) for the purposes of section 14-200(1)(c)(ii) of Subdivision 14-D.

**30 June 2018 Distribution** means a distribution to Target Securityholders which is made in compliance with clause 6.1.

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

**APT** has the meaning given in the Details.

**APTIT** has the meaning given in the Details.

**APTIT Net Income** means the 'net income' of APTIT under section 95(1) of the *Income Tax Assessment Act 1936* (Cth).

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

**Associate** has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this document and on the basis that Target is the 'designated body'.

**ASX** means ASX Limited or the market operated by it, as the context requires.

**ATO** means the Australian Taxation Office.

**Authorisation** means an approval, authorisation, consent, declaration, exemption, licence, notarisation, permit or waiver, however it is described, including any renewal or amendment and any condition attaching to it.

**Authorised Officer** means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

**Bidder** has the meaning given in the Details.

**Bidder Alternative Transaction** means any written expression of interest, proposal, offer, agreement, arrangement or transaction (other than the Proposal), which, if completed, would mean Bidder, a Guarantor or any of their respective Related Bodies Corporate, whether alone or together with any Associates, partners, consortium members, financial sponsors, investors, syndicate members, joint venturers or any other Entity or organisation of any kind would:

- (a) directly or indirectly acquire an interest or Relevant Interest in, or have a right to acquire a legal, beneficial or economic interest in, or control

of, or become the holder of, 20% or more of any class of Target Securities (other than as custodian, nominee or bare trustee);

- (b) acquire Control of the Target or of any Material Member of the Target Group such that the Target or Material Member of the Target Group would be Controlled by all or any of them;
- (c) directly or indirectly acquire, become the holder, obtain a right to acquire, or otherwise acquire or have a right to acquire a legal, beneficial or economic interest in, or control of, all or a substantially all of the business or assets of the Target Group or of any Material Member of the Target Group;
- (d) otherwise directly or indirectly acquire or merge (including by a reverse takeover bid or dual listed company structure) or be stapled with the Target; or
- (e) require the Target to abandon, or otherwise fail to proceed with, the Proposal,

whether by way of takeover bid, scheme of arrangement, trust scheme of arrangement, shareholder or securityholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets or liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement or other transaction or arrangement.

**Bidder Board** means the board of directors of Bidder.

**Bidder Counterproposal** has the meaning given in clause 11.9.

**Bidder Group** means Bidder, each Guarantor and each of their respective Related Bodies Corporate.

**Bidder Indemnified Parties** means:

- (a) Bidder and each Guarantor;
- (b) the officers, employees and advisers of Bidder and each Guarantor; and
- (c) the Related Bodies Corporate of Bidder and each Guarantor and the officers, employees and advisers of each of those Related Bodies Corporate.

**Bidder Information** means the information regarding Bidder, the Guarantors and each of their respective Related Bodies Corporate provided to Target RE for inclusion in the Explanatory Memorandum. Bidder Information does not include information about Target RE or the Target Group (except to the extent it relates to any statement of intention relating to Target RE or the Target Group following the Effective Date).

**Bidder Representations and Warranties** means the representations and warranties of Bidder set out in clause 14.3.

**Break Fee** means:

- (a) in relation to each of clauses 12.2(a) and 12.2(b): A\$130,000,000; and
- (b) in relation to clause 12.2(c): A\$50,000,000.

**Business Day** means any day that is each of the following:

- (a) a business day as defined in the Listing Rules;
- (b) a day that banks are open for business in Sydney, Australia;
- (c) a day that banks are open for business in Hong Kong; and
- (d) a day that banks are open for business in London, United Kingdom,

except that, for the purposes of the definitions of Record Date and Implementation Date, "Business Day" means only a business day as defined in the Listing Rules.

**Capital Projects Document** means document 4.4 of the Data Room containing the list of the capital projects.

**Capital Projects Scope** means:

- (a) the list of the capital projects in the Capital Projects Document; and
- (b) capital projects of a type consistent with the types of capital projects, or categories of capital projects, listed in the Capital Projects Document.

**CKA** has the meaning given in the Details.

**CKA Board** means the board of directors of CKA.

**CKA Shareholder Materials** means the notice of meeting, the proxy form, the shareholder circular and any other documents that CKA is required to prepare and distribute to CKA shareholders for the purpose of the CKA Shareholder Meeting in accordance with applicable laws or the rules or requirements of HKEx.

**CKA Shareholder Meeting** means a meeting of shareholders of CKA to be convened by CKA to consider:

- (a) the CKA Shareholder Resolution; and
- (b) unless the Condition Precedent in clause 3.1(d) has been waived, the Consortium Shareholder Resolutions of CKA as separate resolutions to, and which are not conditional on, the CKA Shareholder Resolution,

in each case, in accordance with the HKEx Listing Rules.

**CKA Shareholder Resolution** means the resolution that is required to be approved at a general meeting of shareholders of CKA in accordance with the HKEx Listing Rules to authorise CKA to carry out the Proposal on terms where Bidder is its wholly-owned Subsidiary.

**CKHH** means CK Hutchison Holdings Limited.

**CKI** has the meaning given in the Details.

**Claim** means, in relation to a party, a demand, claim, action or proceeding made or bought by or against the party, however arising and whether present, unascertained, immediate, future or contingent.

**Competing Transaction** means any written expression of interest, proposal, offer, agreement, arrangement or transaction which, if entered into or completed, would mean that a Third Party either alone or with any of its Associates would:



- (a) directly or indirectly acquire an interest or Relevant Interest in, or have a right to acquire a legal, beneficial or economic interest in, or control of, or become the holder of, 20% or more of any class of Target Securities (other than as custodian, nominee or bare trustee);
- (b) acquire Control (either alone or with any Associate) of the Target or of any Material Member of the Target Group;
- (c) directly or indirectly acquire, become the holder, obtain a right to acquire, or otherwise acquire or have a right to acquire a legal, beneficial or economic interest in, or control of, all or a substantially all of the business or assets of the Target Group or of any Material Member of the Target Group;
- (d) otherwise directly or indirectly acquire or merge (including by a reverse takeover bid or dual listed company structure) or be stapled with the Target; or
- (e) require the Target to abandon, or otherwise fail to proceed with, the Proposal,

whether by way of takeover bid, scheme of arrangement, trust scheme of arrangement, shareholder or securityholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets or liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement or other transaction or arrangement.

**Conditions Precedent** means the conditions precedent set out in clause 3.1.

**Confidentiality Agreement** means:

- (a) the Mutual Confidentiality Agreement between Target RE and CKI dated on or around 12 June 2018;
- (b) the Mutual Confidentiality Agreement between Target RE and CKA dated 20 June 2018; and
- (c) the Mutual Confidentiality Agreement between Target RE and PAH dated 20 June 2018.

**Consortium Arrangements** mean the consortium arrangements between CKI, CKA and PAH relating to Bidder and its implementation of the Proposal and the transactions contemplated thereunder.

**Consortium Shareholder Resolutions** means all resolutions that are required to be approved by the respective shareholders of CKA, CKHH, CKI and PAH under the laws of their respective places of incorporation and under Chapters 14 and 14A of the HKEx Listing Rules in relation to the Consortium Arrangements.

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

**Controlled Entities** means, in relation to an entity, another entity which is a Subsidiary of it, or which is Controlled by it.

**Controller** has the meaning it has in the Corporations Act.

**Constitutions** means the constitutions of each of APT and APTIT from time to time and **Constitution** means any one of them (as the context requires).

**Corporations Act** means the *Corporations Act 2001* (Cth), as modified by any applicable ASIC relief.

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

**Costs** includes costs, charges and expenses, including those incurred in connection with advisers and any legal costs on a full indemnity basis.

**Court** means the Supreme Court of New South Wales, or such other court of competent jurisdiction under the Corporations Act agreed by Target RE and Bidder.

**Data Room** means the electronic data room hosted by Intralinks in relation to the Proposal.

**Deed Poll** means a deed poll substantially in the form of Annexure C to this document.

**Details** means the section of this document headed "Details".

**Disclosed** means fairly disclosed:

- (a) by Target RE in writing to Bidder, any Guarantor or any of their respective Representatives prior to the date of this document in the Due Diligence Materials; or
- (b) in any announcement made by Target RE on ASX prior to the date of this document.

**Due Diligence Materials** means the documents and information (including written responses from Target and its Representatives to requests for further information made by Bidder, the Guarantors and/or their respective Representatives) contained in the Data Room made available by Target to Bidder, the Guarantors and certain of their respective Representatives at 5.30pm on 10 August 2018, the index of which has been initialled by, or on behalf of, Target RE and Bidder for identification.

**Effective** means when the Supplemental Deeds Poll take effect pursuant to section 601GC(2) of the Corporations Act.

**Effective Date** means the date on which the Proposal becomes Effective.

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the PPSA or any agreement to create any of them or allow them to exist.

**End Date** means 31 March 2019 or such other date as is agreed by Bidder and Target RE.

**Entity** includes a natural person, a body corporate, a partnership, a trust and the trustee of a trust.

**Exclusivity Period** means the period from and including the date of this document to the earlier of:

- (a) the termination of this document in accordance with its terms; and
- (b) the End Date.

**Explanatory Memorandum** means the information booklet to be despatched to Target Securityholders which must:

- (a) include a notice of meeting and proxy form for the Proposal Resolutions; and
- (b) comply with the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 74, Guidance Note 15, the Listing Rules and any other applicable law.

**FIRB** means the Australian Foreign Investment Review Board.

**FIRB Act** means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

**First Judicial Advice** means the confirmation obtained by Target RE from the Court under section 63 of the *Trustee Act 1925* (NSW) confirming, amongst other things, that Target RE would be justified in convening the Meeting.

**First Judicial Advice Date** means the date on which the First Judicial Advice is received.

**Forward Looking Information** has the meaning given in clause 14.5.

**Government Agency** means any government or governmental, semi-governmental, administrative, political, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government of any country.

**Guaranteed Obligations** has the meaning given in clause 15.3(a)(i).

**Guarantors** means CKI, CKA and PAH collectively, and **Guarantor** means each of them.

**Guidance Note 15** means the document titled "Guidance Note 15: Trust scheme mergers" issued by the Takeovers Panel.

**HKEx** means The Stock Exchange of Hong Kong Limited.

**HKEx Listing Rules** means the Rules Governing the Listing of Securities on the HKEx and any other applicable rules of HKEx modified to the extent of any express written waiver by HKEx.

**Implementation Date** means:

- (a) if the Record Date is 6 or more Business Days prior to 31 January 2019, the 5<sup>th</sup> Business Day following the Record Date;
- (b) in all other cases, the 12<sup>th</sup> Business Day following the Record Date; or
- (c) such other day as Target RE and Bidder agree in writing.

**Independent Expert** means the independent expert appointed by Target RE under clause 5.2(e).

**Independent Expert's Report** means the report prepared by the Independent Expert for inclusion in the Explanatory Memorandum, including any update or supplementary report, stating whether or not in the Independent Expert's opinion the Proposal is fair and reasonable and in the best interests of Target Securityholders.

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); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property; or
- (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 document); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 14 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 of the things described in paragraphs (a), (b) or (c); or
- (e) it has executed a deed of company arrangement; or
- (f) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (g) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject); or
- (h) it is otherwise unable to pay its debts when they fall due; or
- (i) something having a substantially similar effect to (a) to (h) happens in connection with that person under the law of any jurisdiction; or
- (j) in the case of a trust, the trustee's right of indemnity out of the assets of the trust is not sufficient to meet the liabilities of the trust when they fall due.

**Judicial Advice** means the First Judicial Advice and Second Judicial Advice.

**Listing Rules** means the Listing Rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

**Losses** means all Claims, demands, damages, losses, costs, expenses and liabilities.

**Material Member of the Target Group** means each of the following members of the Target Group: Target RE; APT; APTIT; Australian Pipeline Limited; APT Pipelines Limited; any entity that is an employer of Target Group employees; any entity that has a direct or indirect ownership interest in the Wallumbilla Gladstone Pipeline, South West Queensland Pipeline, Moomba Sydney Pipeline, Victorian Transmission System, Diamantina & Leichhardt Power Stations or Roma Brisbane Pipeline.

**Meeting** means the meeting or meetings of Target Securityholders to consider, and if thought fit, pass the Proposal Resolutions, and includes any adjournment of that meeting or those meetings.

**Meeting Date** means the date on which the Meeting is held.

**Other Shareholder Materials** means the notice of meeting, the proxy form, the shareholder circular and any other documents that CKHH, CKI or PAH is required to prepare and distribute to their respective shareholders for the purpose of a general meeting convened by each of them to consider their respective Consortium Shareholder Resolutions in accordance with applicable laws or the rules or requirements of HKEx.

**PAH** has the meaning given in the Details.

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

**PPSR** means the Personal Property Securities Register.

**Proposal** means the arrangement, the detailed terms of which will be explained more fully in the Explanatory Memorandum, under which Bidder will acquire all of the Target Securities from the Proposal Participants by way of inter-conditional trust schemes for the Target to be implemented in accordance with Guidance Note 15, Regulatory Guide 74 and facilitated by amendments to the Constitutions as set out in the Supplemental Deeds Poll and resolutions pursuant to section 611 item 7 of the Corporations Act.

**Proposal Consideration** means the consideration payable by Bidder for the transfer of Target Securities held by a Proposal Participant to Bidder, being, in respect of each Target Security, a cash amount of A\$11.00.

**Proposal Participant** means each person who is a Target Securityholder as at the Record Date.

**Proposal Resolutions** means the resolutions which, in substance, are as follows:

- (a) in respect of each of APT and APTIT, an ordinary resolution to approve the Proposal for the purposes of item 7 of section 611 of the Corporations Act including the acquisition of a Relevant Interest in all the Target Securities by Bidder; and
- (b) conditional on (a), in respect of each of APT and APTIT, a special resolution for the purposes of section 601GC(1) of the Corporations Act to approve amendments to each Constitution as set out in the Supplemental Deeds Poll.

**Record Date** means 5.00pm on the 4<sup>th</sup> Business Day following the Effective Date or such other date as Target RE and Bidder agree in writing.

**Register** means the unit register of the Target.

**Registry** means the person which manages the Register for the Target.

**Regulator's Draft** means the draft of the Explanatory Memorandum in a form acceptable to Bidder and Target RE which is provided to ASIC for review for the purposes of Regulatory Guide 74.

**Regulatory Approval** means any approval of a Regulatory Authority to the Proposal or any aspect of it which is necessary or desirable to implement the Proposal.

**Regulatory Authority** includes:

- (a) ASX, ACCC, ASIC, FIRB, the Takeovers Panel and the European Commission;

- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

**Regulatory Guide 74** means ASIC's "Regulatory Guide 74 (Acquisitions agreed to by shareholders)".

**Related Body Corporate** has the meaning set out in section 50 of the Corporations Act, except that the term "body corporate" in that term includes any Entity and the term "subsidiary" where used in that section has the meaning given to "Subsidiary" in this document.

**Relevant Approvals with respect to CKI** means:

- (a) the passing of the Consortium Shareholder Resolutions of CKA, CKHH and CKI; and
- (b) the satisfaction of the Condition Precedent in clause 3.1(d) (EU Merger Regulation).

**Relevant Approvals with respect to PAH** means:

- (a) the passing of the Consortium Shareholder Resolutions of CKA and PAH; and
- (b) the satisfaction of the Condition Precedent in clause 3.1(d) (EU Merger Regulation).

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

**Relevant Proportion** has the meaning given in clause 15.3(h).

**Representative** means any person acting for or on behalf of a party including any Controlled Entity of a party or any director, officer, employee, agent or professional advisor of a party or a Controlled Entity of a party. For the avoidance of doubt:

- (a) references to Target RE as a party mean Australian Pipeline Limited (ABN 99 091 344 704) solely in its capacity as responsible entity of the Target; and
- (b) any property or investment management advisors or agents of the Target or Target RE are not a Representative of the Target or Target RE.

**Reverse Break Fee** means A\$50,000,000.

**Second Judicial Advice** means the confirmation obtained by Target RE from the Court under section 63 of the *Trustee Act 1925* (NSW) confirming, amongst other things, that Target RE is justified in proceeding to implement the Proposal.

**Second Judicial Advice Date** means the date on which the Second Judicial Advice is obtained.

**Special Distribution** means a distribution to Target Securityholders which is made in compliance with clause 6.2.

**Specified Event** means an event, occurrence or matter that:

- (a) occurs after the date of this document;
- (b) occurs before the date of this document but is only announced or publicly disclosed after the date of this document; or
- (c) will or is likely to occur after the date of this document and which has not been publicly announced prior to the date of this document.

**Subdivision 14-D** has the meaning given in clause 18.1.

**Subsidiary** of an entity means another entity which:

- (a) is both:
  - (i) a subsidiary of the first entity within the meaning of the Corporations Act; and
  - (ii) part of a consolidated group constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares, or would be if the first entity was required to prepare consolidated financial statements; or
- (b) is Controlled by the first entity.

A trust may be a subsidiary (and an entity may be a subsidiary of a trust) if it would have been a subsidiary under this definition if that trust were a body corporate. For these purposes, a unit or other beneficial interest in a trust is to be regarded as a share.

**Superior Proposal** means a bona fide Competing Transaction received by Target RE (and not received as a result of a material breach by Target RE of its obligations under clause 11) which the Target RE Board, acting in good faith and in order to satisfy what the Target RE Board considers to be their fiduciary or statutory duties (and after taking advice from Target RE's legal and financial advisers), determines:

- (a) is reasonably capable of being valued and completed taking into account all aspects of the Competing Transaction, including any timing considerations, any conditions or other matters affecting the probability of the Competing Transaction being completed, and the identity of the person making such proposal; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to Target Securityholders than the Proposal, taking into account all aspects of the Competing Transaction, including the identity, reputation and financial condition of the person making such proposal, legal, regulatory and financial matters.

For the avoidance of doubt, a breach by Target RE of clause 11 is not material merely by virtue of the fact that a Competing Transaction is received by Target RE as a result of the breach.

**Supplemental Deeds Poll** means:

- (a) the supplemental deed poll amending the Constitution of APT in the form, or substantially in the form, of Annexure A; and
- (b) the supplemental deed poll amending the Constitution of APTIT in the form, or substantially in the form, of Annexure B.

**Target** means APA, which comprises APT and APTIT.

**Target Group** means Target RE, Target and each of their respective Subsidiaries (which, for this purpose, is a reference to an entity that is a Subsidiary of Target RE by reason of the fact that Target RE is the responsible entity of Target) and **member of the Target Group** means each entity that is part of the Target Group.

**Target Indemnified Parties** means:

- (a) Target RE and the Target;
- (b) the officers, employees, and advisers of Target RE and the Target; and
- (c) the Related Bodies Corporate of Target RE and the Target and the officers, employees and advisers of each of those Related Bodies Corporate.

**Target Information** means all information contained in the Explanatory Memorandum other than the Bidder Information and the Independent Expert's Report.

**Target Joint Venture Entity** means any entity in which a member (or members, in aggregate) of the Target Group has an ownership interest of less than 100%.

**Target JVE Member** means the member (or members, in aggregate) of the Target Group who directly own an interest in a Target Joint Venture Entity.

**Target JVE Member's Proportionate Share** means the proportion which the Target JVE Member's securities or interests in the Target Joint Venture Entity bear to the aggregate issued securities or interests of all persons holding an interest in the Target Joint Venture Entity.

**Target Material Adverse Change** means a Specified Event which has, has had, or is reasonably likely to have, either individually or when aggregated with any Specified Events of a similar kind or category, the effect of:

- (a) the consolidated net assets (but not including any diminution in intangible assets) of the Target Group (taken as a whole) being reduced by at least A\$500 million against what it would reasonably be expected to have been but for that Specified Event; or
- (b) the consolidated earnings before interest, tax, depreciation and amortisation (excluding the value of any asset value adjustments) of the Target Group being reduced by at least A\$150 million per financial year in any two or more financial years,

but does not include:

- (c) any matter required or permitted by a Transaction Document, the Proposal or the transactions contemplated by either;
- (d) any matter Disclosed (or which ought reasonably have been expected to arise from a matter, event or circumstance which was so Disclosed);
- (e) any matter, event or circumstance which arises from:
  - (i) changes in commodity prices, exchanges rates or interest rates;
  - (ii) general economic, political or business conditions, including material adverse changes or major disruptions to, or fluctuations



in, domestic or international financial markets, and acts of terrorism, war (whether or not declared), natural disaster or the like;

- (iii) changes to accounting standards, laws or policies of a Government Agency in Australia; or
- (iv) any law not in force as at the date of this document or the application, or any change in the application or interpretation, by any Regulatory Authority of any law, requirement, obligation, principle, standard, policy, rule, regulation or administrative practice in respect of which any member of the Target Group is required to comply or which otherwise has any direct or indirect impact on a member of the Target Group,

but excludes any matter, event or circumstances which has a disproportionate effect on the Target Group, taken as a whole, as compared to other participants in the industries in which the Target Group operates; or

- (f) any Specified Event occurring:
  - (i) with the written consent of Bidder or any Guarantor; or
  - (ii) as a result of any action taken within the control of Bidder or any Guarantor.

**Target Prescribed Event** means any of the following events:

- (a) **(conversion)** Target RE converts all or any of the Target Securities into a larger or smaller number of securities, or a resolution is passed to do so;
- (b) **(reduction of capital)** any member of the Target Group reduces, or resolves to reduce, its capital in any way, or reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its securities, other than to effect a distribution of cash from:
  - (i) an entity, all of the issued shares or units of which are owned by one or more members of the Target Group, to its immediate holding entity or entities within the Target Group; or
  - (ii) a Target Joint Venture Entity to its securityholders on a pro-rata basis;
- (c) **(buy-back)** any member of the Target Group buys back or agrees to buy back any of its securities, other than for cash consideration payable by:
  - (i) an entity, all of the issued shares or units of which are owned by one or more members of the Target Group, to its immediate holding entity or entities within the Target Group; or
  - (ii) a Target Joint Venture Entity to its securityholders on a pro-rata basis;
- (d) **(distribution)** Target RE makes or declares, or announces an intention to make or declare, any distribution in respect of Target Securities (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie), other than the 30 June 2018 Distribution and any Special Distribution;

- (e) **(issuing equity securities or instruments)** any member of the Target Group issues or agrees to issue units, equity securities (as defined in the Listing Rules), options over its units or equity securities (as defined in the Listing Rules), or instruments convertible into its units or equity securities (as defined in the Listing Rules), or issues or agrees to issue any other form of equity instrument, other than:
- (i) to an entity, all the issued shares or units of which are owned by one or more members of the Target Group; or
  - (ii) where the issuing entity is a Target Joint Venture Entity, an issuance by the entity to its securityholders on a pro-rata basis (including where the Target JVE Member subscribes, on a pro rata basis, for any additional securities as a result of other members in the Target Joint Venture Entity not taking up their full entitlement) to fund the operation of the Target Joint Venture Entity in the ordinary course of its business;
- (f) **(constitution)** Target RE or the Target adopts a new constitution, makes any material change or repeals its respective constitution or a provision of it (other than pursuant to the amendments required for the implementation of the Proposal);
- (g) **(acquisitions, disposals or tenders)** any member of the Target Group:
- (i) acquires or disposes of;
  - (ii) agrees to acquire or dispose of; or
  - (iii) offers, proposes, announces a bid or tenders for,  
any asset, security, entity, business or undertaking (or similar business arrangement) (each an **Asset/Business**):
  - (iv) of any consideration or value, where the Asset/Business is, or involves assets or securities that are, located or issued outside of Australia; or
  - (v) if sub-paragraph (iv) does not apply, the total consideration or the value of which exceeds A\$50 million (either individually or, in the case of related businesses or classes of assets or a series of related transactions, collectively),  
other than:
  - (vi) a lease, licence or acquisition of an Asset/Business (other than a security, entity, business or undertaking (or similar business arrangement)) in, or which is used in, the ordinary and usual course of business;
  - (vii) for a development or capital project which is within the Capital Projects Scope;
  - (viii) the acquisition or disposal of any financial Asset/Business (other than an entity, business or undertaking (or similar business arrangement)) or financial instrument:
    - (A) located outside Australia; or
    - (B) issued by an entity that is located outside Australia,

in each case part of the Target Group's treasury management activities in the ordinary course and consistent with past practice;

- (ix) the transfer of an Asset/Business (other than a security in a member of the Target Group) to or from a member of the Target Group (where no party to the transaction is a Target Joint Venture Entity); or
- (x) the transfer of a security in a member of the Target Group to or from a member of the Target Group (where no party to the transaction is a Target Joint Venture Entity) that Bidder has given its prior written consent to (such consent not to be unreasonably withheld);
- (h) **(Encumbrances)** other than in the ordinary course of business any member of the Target Group creates, or agrees to create, any Encumbrance over the whole or a substantial part of its business or property;
- (i) **(cessation of business)** any Material Member of the Target Group ceases, or threatens to cease, to carry on business;
- (j) **(deregistration)** any Material Member of the Target Group is deregistered as a company or registered managed investment scheme, or is otherwise dissolved;
- (k) **(contract not on arm's length terms)** any member of the Target Group enters into any transaction or agreement that continues beyond the Implementation Date on terms that are not arm's length commercial terms;
- (l) **(material contract)** any member of the Target Group enters into, or materially varies or terminates any contract that:
  - (i) is not consistent with the Target Group's past practice or would reasonably be expected to result in a credit rating downgrade by Moody's Investor Services Limited or S&P Global Ratings of the Target Group;
  - (ii) generates, or is expected to generate, annual revenue for the Target Group in excess of A\$50 million individually, or in excess of A\$150 million when aggregated with all related contracts; or
  - (iii) generates, or is expected to generate, gross annual expenditure for the Target Group in excess of A\$20 million individually, or in excess of A\$100 million when aggregated with all related contracts,other than in relation to capital projects that are within the Capital Projects Scope;
- (m) **(capital expenditure)** any member of the Target Group enters into any commitments for capital expenditure on capital projects, other than commitments for capital expenditure on capital projects:
  - (i) under a legally binding contract entered into by a member of the Target Group which has been Disclosed; or
  - (ii) which are:

- (A) listed in the Capital Projects Document; or
- (B) of a type within paragraph (b) of the Capital Projects Scope, provided that all such capital projects are consistent with the Target Group's past practice and that any individual capital project involves aggregate capital expenditures of not more than \$500 million,

up to the maximum aggregate capital expenditure amount for all capital projects as set out in the Capital Projects Document;

- (n) **(Authorisations)** any member of the Target Group takes any action that is intended to result in the termination, surrender, or variation in a material respect of an Authorisation that is material to the Proposal (taking into account the operations of the Target Group as a whole);
- (o) **(Regulation)** any member of the Target Group takes any action that is intended to result in any asset becoming subject to economic regulation by the Australian Energy Regulator, Economic Regulation Authority Western Australia or a similar body that is material to the Proposal (taking into account the entirety of the operations of the Target Group);
- (p) **(undertaking)** any member of the Target Group takes any action that results, or could reasonably be expected to result in, Bidder being unable to comply with any proposed undertaking to the ACCC set out in Attachment F of the ACCC's Market Enquiries Letter dated 26 June 2018 in respect of APA;
- (q) **(Claim)** a Claim is brought against any member of the Target Group (other than a frivolous or vexatious Claim) which will or is likely to have an adverse effect on Target in excess of A\$50 million (excluding any amount recoverable, or reasonably considered to be recoverable, under a contract of insurance to which a member of the Target Group is a party) or if any member of the Target Group becomes the subject of regulatory prosecution that will or is likely to have an adverse effect on the Target in excess of A\$50 million (excluding any amount recoverable, or reasonably considered to be recoverable, under a contract of insurance to which a member of the Target Group is a party) (either individually or in the case of related Claims or a series of related Claims, collectively);
- (r) **(entry into financing arrangements)** any member of the Target Group makes or agrees to make, any loan or advance, or enters into any financing arrangement, agreement or instrument with a person other than a member of the Target Group or a Target Joint Venture Entity (on terms substantially consistent with the key commercial terms of any financing provided by other members of the Target Joint Venture Entity), or amends in any material manner the terms of any existing financing arrangement, agreement or instrument with a person other than:
  - (i) a member of the Target Group;
  - (ii) a Target Joint Venture Entity where the terms are substantially consistent with the key commercial terms of any financing provided by other members of the Target Joint Venture Entity;
  - (iii) with respect to any facility that is between a Subsidiary of APT or APTIT and any other person, to increase the total facility limit under an existing debt facility by an amount which (when aggregated with all other increases by other Subsidiaries of APT or APTIT that have occurred on or after the date of this

document) is not more than A\$250 million, provided that such increase will not reasonably be expected to result in a credit rating downgrade by Moody's Investors Service Limited or S&P Global Ratings of the Target Group; or

- (iv) the entry into new facilities or financing arrangements, or amendment of existing facilities or financing arrangements, to:
  - (A) refinance any facility that is maturing in 2018 or 2019; or
  - (B) repay any amounts drawn under existing syndicated facilities or bilateral facilities,

provided that:

- (C) the facility or financing arrangement which is entered into or amended is at market rates and does not result in the aggregate available funds for drawdown under all of the Target Group's facilities and financing arrangements being greater than the amount which is available for drawdown as at the date of this document;
- (D) there is no material change in the covenants from those in the facility to be refinanced (and in this context the introduction of, or variation to, a change in control type provision is, without limitation, taken to constitute a 'material change'); and
- (E) the entry into the new facilities or financing arrangements, or amendment of existing facilities or financing arrangements, will not reasonably be expected to result in a credit rating downgrade by Moody's Investors Service Limited or S&P Global Ratings of the Target Group,

but, for the avoidance of doubt, nothing prevents any member of the Target Group making any draw down under any existing facility as at the date of this document or under any facility otherwise permitted above;

- (s) **(breach of financing arrangements)** in respect of any financing arrangement, agreement or instrument a member of the Target Group has with a person other than a member of the Target Group, a member of the Target Group:
  - (i) breaches any covenant that is not waived or is not remedied in accordance with the relevant cure rights, under the arrangement, agreement or instrument;
  - (ii) allows an event of default, or potential event of default, to occur that is not remedied in accordance with the relevant cure rights under the arrangement, agreement or instrument;
  - (iii) allows an obligation to pay an amount to be accelerated other than to prevent an event referred to in paragraphs (i) or (ii) above from occurring;
  - (iv) takes any action (including incurring any new indebtedness or drawing down moneys) which leads to the credit rating of any member of the Target Group being downgraded or placed on negative watch; or

- (v) other than to prevent an event referred to in sub-paragraph (i) or sub-paragraph (ii) above from occurring or in the ordinary course and consistent with past practice (including to pay down revolving facilities), permanently prepays amounts owing under the relevant arrangement, agreement or instrument and then cancels the facility limit,

other than any breach, event of default or acceleration of a payment obligation which arises as a result of the Proposal;

- (t) **(Insolvency)** the Target or any of its Related Bodies Corporate becomes Insolvent;
- (u) **(derivatives)** any member of the Target Group enters into an agreement, arrangement or transaction with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments, except made in the ordinary course of business;
- (v) **(accounting policy)** any member of the Target Group makes any material change to its accounting policy, other than to the extent required by law or applicable accounting standards;
- (w) **(trading business)** Target RE approves or takes any action or makes any investment that could reasonably result in APTIT commencing to carry on a trading business within the meaning of Division 6C of the *Income Tax Assessment Act 1936* (Cth) or controlling or having the ability to control, directly or indirectly, the affairs or operations of another person in respect of the carrying on by that person of a trading business within the meaning of that Division;
- (x) **(delisting or suspension)** Target is delisted or Target Securities are subject to suspension or cessation of quotation for 5 or more Business Days, other than due to, or as a result of, an action taken by any member of the Bidder Group or at the request of the Target or Target RE arising from the need to provide information to ASX in connection with acquisition proposals relating to the Target or its material assets;
- (y) **(Trusts)** any of the following occurs other than as part of the Proposal or in accordance with this document:
  - (i) Target RE ceases to be the responsible entity of the Target;
  - (ii) the Target Securityholders resolve to remove or replace Target RE as responsible entity of the Target;
  - (iii) a meeting being convened to consider a resolution for the removal, retirement or replacement of Target RE as responsible entity of the Target;
  - (iv) an order is made by any court, or any application being made in any court, for the appointment of a temporary responsible entity of Target in accordance with the Corporations Act;
  - (v) Target effects or facilitates a termination of APT or APTIT; or
  - (vi) Target effects or facilitates the resettlement of the Trust Property,
- (z) **(minority Target Joint Venture Entities)** the event is undertaken or implemented by, or occurs in relation to, a Target Joint Venture Entity

(where the event was undertaken, implemented or occurred with the approval or consent of the applicable Target JVE Member) which would breach, if that Target Joint Venture Entity were a member of the Target Group, paragraph:

- (i) (b), (c), (e), (h), (k), (n), (o), (p), (r), (s), (u) or (v);
- (ii) (g), provided that in the case of paragraph (g)(v), only the applicable Target JVE Member's Proportionate Share of the total consideration or value is counted for the purposes of the monetary threshold in paragraph (g)(v);
- (iii) (l), provided that:
  - (A) only the applicable Target JVE Member's Proportionate Share of the annual revenue to be generated, or expected to be generated, by the applicable contract is counted for the purposes of the monetary threshold in paragraph (l)(ii); and
  - (B) only the applicable Target JVE Member's Proportionate Share of the gross annual expenditure to be generated, or expected to be generated, by the applicable contract is counted for the purposes of the monetary threshold in paragraph (l)(iii);
- (iv) (m), provided that in the case of paragraph (m)(ii)(B), only the applicable Target JVE Member's Proportionate Share of the aggregate capital expenditures on any individual capital project is counted for the purposes of the monetary threshold in paragraph (m)(ii)(B); or
- (v) (q), provided that only the applicable Target JVE Member's Proportionate Share of the adverse effect of any such Claim or regulatory prosecution is counted for the purposes of the monetary threshold in paragraph (q),

provided that a Target Prescribed Event listed above will not occur where:

- (aa) the event is required or permitted by a Transaction Document, the Proposal or the transactions contemplated by either;
- (bb) the event is Disclosed and the event, when it occurs, is materially the same as had been Disclosed (except that the terms of this paragraph (bb) do not apply to paragraphs (g)(vii), (l) or (m)(ii)(A));
- (cc) Target RE has first consulted with Bidder in relation to the event and Bidder, a Guarantor or any of their Representatives has approved the proposed event or has not objected to the proposed event within 5 Business Days of having been so consulted;
- (dd) the event is undertaken or implemented by, or occurs in relation to, a Target Joint Venture Entity, without being authorised or permitted by a member of the Target Group or its Representative; or
- (ee) a Target Joint Venture Entity enters into any financing arrangement, agreement or instrument in relation to the financing of a capital project that is within the Capital Projects Scope.

**Target RE** means Australian Pipeline Limited (ABN 99 091 344 704) in its capacity as responsible entity of APT and APTIT.

**Target RE Board** means the board of directors of Target RE.

**Target RE Director** means a director of Target RE.

**Target RE Representations and Warranties** means the representations and warranties of Target RE set out in clause 14.1.

**Target Securities** means the Target stapled securities, each comprising one unit in APT and one unit in APTIT.

**Target Securityholder** means a person who is registered in the Register as the holder of Target Securities, and Target Securityholders means all of them.

**Third Party** means any of the following:

- (a) a person other than Bidder or a Guarantor or any of their respective Related Bodies Corporate; or
- (b) a consortium, partnership, limited partnership, syndicate or other group in which none of Bidder or a Guarantor or any of their respective Related Bodies Corporate has agreed in writing to be a participant.

**Timetable** means the timetable set out in Schedule 1, as amended or varied (including under clause 2.2).

**Transaction Announcement** means the announcement that is issued in accordance with clause 17.1.

**Transaction Documents** means this document, the Supplemental Deeds Poll and the Deed Poll.

**Transaction Implementation Committee** means a committee to be made up of:

- (a) a Target Group executive to represent the Target;
- (b) an individual nominated by the Guarantors and Bidder to represent them;
- (c) a representative from each of the legal and financial advisers of Target and Bidder; and
- (d) such other persons as the parties may agree from time to time.

**Treasurer** means the Treasurer of Australia.

**Trust Property** means all of the rights, property and undertaking which are the subject of the trusts constituted by each Constitution (as applicable):

- (a) of whatever kind and wherever situated; and
- (b) whether present or future.

**Trustees** has the meaning given in clause 14.3(r).

**Trustees' CKA Shares** has the meaning given in clause 14.3(r).

**Voting Undertaking** means the duly executed irrevocable and unconditional undertaking to vote all the Trustees' CKA Shares in favour of the CKA Shareholder Resolution (in the form agreed by CKA and Target RE prior to the date of this document).



## 1.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) a reference to a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document;
- (e) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (f) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (g) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) a reference to a time of day is a reference to Sydney time;
- (i) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day;
- (j) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (k) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (l) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (m) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (n) a reference to an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (o) a reference to an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (p) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (q) a reference to a group of persons or things is a reference to any 2 or more of them jointly and to each of them individually; and

- (r) a reference to any thing (including an amount) is a reference to the whole and each part of it.

### **1.3 Fairly disclosed**

A fact, matter, circumstance or thing will be fairly disclosed if it is disclosed in writing in good faith and in sufficient detail so as to reasonably apprise a person as to the nature and scope of the relevant matter, event, circumstance or thing.

### **1.4 Reasonable endeavours and best endeavours**

Any provision of this document that requires a party to use reasonable endeavours, all reasonable endeavours or best endeavours, or to take all steps reasonably necessary, to procure that something is performed or occurs, requires that party to do so as soon as is reasonably practicable, but does not include any obligation:

- (a) to pay any significant sum of money or to provide any significant financial compensation, valuable consideration or any other incentive to or for the benefit of any person, except for payment of any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority or fees to any professional advisers;
- (b) to commence any legal action or proceeding against any person, to procure that that thing is done or happens; or
- (c) agree to commercially onerous or unreasonable conditions,

except where that provision expressly specifies otherwise.

### **1.5 Next Business Day**

If an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

### **1.6 Obligations in respect of joint ventures**

Where this document:

- (a) obliges or purports to oblige any member of the Target Group to act or to refrain from acting; or
- (b) otherwise specifies or purports to specify the obligations of a member of the Target Group,

in relation to a Target Joint Venture Entity then the obligations of the Target and the applicable Target JVE Member will be limited to using the rights within its control (whether through shareholder, director or other rights) to procure that the Target Joint Venture Entity acts or refrains from acting in accordance with this document and otherwise complies with those obligations under this document which are expressed to apply to members of the Target Group.

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## **2 Agreement to propose and implement the Proposal**

### **2.1 Target RE to propose the Proposal**

Target RE agrees to propose the Proposal on and subject to the terms and conditions of this document.

## 2.2 Agreement to implement Proposal

Bidder, Target RE and the Guarantors agree to implement the Proposal on the terms and conditions of this document, and agree:

- (a) to use all reasonable endeavours to implement the Proposal as soon as is reasonably practicable and otherwise in accordance with the Timetable, provided that:
  - (i) the Conditions Precedent in clauses 3.1(a) and 3.1(c) are satisfied on or before 5 October 2018; and
  - (ii) nothing requires Target RE to:
    - (A) despatch the notice of meeting for the Meeting prior to the satisfaction of each of the Conditions Precedent in clauses 3.1(a) and 3.1(c); or
    - (B) hold the Meeting prior to the satisfaction of the Condition Precedent in clause 3.1(g); and
- (b) that, if each of the Conditions Precedent in clauses 3.1(a) and 3.1(c) are not, or will not be, satisfied on or before 5 October 2018 and it is not reasonably practicable for the Proposal to be implemented on or before the date specified in the Timetable as the 'Implementation Date', they will use their best endeavours to agree an amended Timetable (acting reasonably) taking into account all relevant factors, including:
  - (i) the likelihood of receiving, and timing of receipt, of the Regulatory Approvals; and
  - (ii) there being no requirement on Target RE to:
    - (A) despatch the notice of meeting for the Meeting prior to the satisfaction of each of the Conditions Precedent in clauses 3.1(a) and 3.1(c); or
    - (B) hold the Meeting prior to the satisfaction of the Condition Precedent in clause 3.1(g).

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## 3 Conditions Precedent

### 3.1 Conditions Precedent

Subject to this clause 3, the Proposal will not become Effective, and the obligations of Bidder under clause 4.2 are not binding, until each of the following Conditions Precedent are satisfied or waived to the extent and in the manner set out in this clause.

Condition Precedent		Party entitled to benefit	Party responsible
(a)	<b>(FIRB approval)</b> before 8.00am on the Second Judicial Advice Date either: <ul style="list-style-type: none"><li>(i) the Treasurer (or the Treasurer's delegate) has provided a written no objection notification under the FIRB</li></ul>	Cannot be waived	Bidder

Condition Precedent	Party entitled to benefit	Party responsible
<p>Act to the Proposal either:</p> <p>(A) without conditions; or</p> <p>(B) subject only to: (1) tax-related conditions which are in the form, or substantially in the form, of those set out in Part A of Attachment A of FIRB Guidance Note 47 on 'Tax Conditions' (in the form released on 24 November 2016); and (2) any conditions that Bidder reasonably considers to be acceptable; or</p> <p>(ii) following notice of the Proposal having been given by Bidder to the Treasurer under the FIRB Act, the Treasurer has ceased to be empowered to make any order under Part 3 of the FIRB Act because the applicable time limit on making orders and decisions under the FIRB Act has expired.</p>		
<p>(b) <b>(ASIC and ASX)</b> before 8.00am on the Meeting Date, ASIC and ASX issue or provide any consents or approvals, or have done any other acts, which Target RE and Bidder agree are reasonably necessary or desirable to implement the Proposal, and those consents, approvals or other acts have not been withdrawn or revoked at that time, including:</p> <p>(i) ASIC has granted a modification of item 7 of section 611 of the Corporations Act, allowing all Target Securityholders (other than those excluded from voting because they are Associates of Bidder) to vote in favour of the Proposal Resolutions for the purpose of item 7 of section 611 of the Corporations Act or indicated in writing that the modification will not be required;</p> <p>(ii) ASIC has granted an exemption in favour of Target RE and Bidder (and their respective Controlled Entities) under Division 2 of Part 7.7 of the Corporations Act from the requirement to provide a financial services guide in connection with the Explanatory Memorandum or indicated in writing that the exemption will not be required;</p>	Both	Both

Condition Precedent	Party entitled to benefit	Party responsible
<p>(iii) ASIC has granted a modification or exemption from Division 5A of Part 7.9 of the Corporations Act in relation to any unsolicited offer to acquire Target Securities under the Proposal or indicated in writing that the modification or exemption will not be required; and</p> <p>(iv) ASX has confirmed that it does not object to the proposed amendments to the Constitutions as set out in the Supplemental Deeds Poll under Listing Rule 15.1.</p>		
<p>(c) <b>(ACCC)</b> before 8.00am on the Second Judicial Advice Date, the ACCC has advised Bidder in writing that it:</p> <p>(i) does not intend to oppose the Proposal; or</p> <p>(ii) does not intend to oppose the Proposal subject to undertakings, commitments or conditions that Bidder reasonably considers to be acceptable,</p> <p>and that advice has not been withdrawn or revoked at that time.</p>	Both	Bidder
<p>(d) <b>(EU Merger Regulation)</b> the European Commission taking a decision (or deemed to have taken a decision) under Article 6(1)(b) of the EU Merger Regulation declaring the Proposal and the Consortium Arrangements (or part thereof) compatible with the common market.</p>	Bidder	Bidder
<p>(e) <b>(Proposal approval)</b> Target Securityholders approve the Proposal Resolutions by the requisite majorities on the Meeting Date in accordance with the Corporations Act.</p>	Cannot be waived	Target RE
<p>(f) <b>(Judicial advice)</b> Target RE obtains the First Judicial Advice and the Second Judicial Advice.</p>	Both	Target RE
<p>(g) <b>(CKA shareholder approval)</b> by the date that is 7 days before the 'Meeting Date' (being the date specified in the Timetable or such other date determined under clause 2.2), the shareholders of CKA approve by the requisite majority the CKA Shareholder Resolution.</p>	Bidder	Bidder

Condition Precedent	Party entitled to benefit	Party responsible
(h) <b>(Regulatory intervention)</b> no Court or Regulatory Authority has issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise prohibiting, materially restricting, making illegal or restraining the implementation of the Proposal or taken any material enforcement action or announced or commenced any investigation against or involving a member of the Target Group or Bidder Group and no such order, decree, ruling, other action or refusal is in effect as at 8.00am on the Second Judicial Advice Date.	Both	Both
(i) <b>(Independent Expert)</b> the Independent Expert issues a report which concludes that the Proposal is fair and reasonable and in the best interests of Target Securityholders before the date on which the Explanatory Memorandum is provided to ASIC and the Independent Expert does not change its conclusion or withdraw its report prior to the Meeting.	Target RE	Target RE
(j) <b>(No Target Prescribed Event)</b> no Target Prescribed Event occurs between the date of this document and 8.00am on the Second Judicial Advice Date.	Bidder	Target RE
(k) <b>(No Target Material Adverse Change)</b> no Target Material Adverse Change occurs between the date of this document and 8.00am on the Second Judicial Advice Date.	Bidder	Target RE

### 3.2 Reasonable endeavours

Each of Target RE and Bidder agree to use all reasonable endeavours to procure that:

- (a) each of the Conditions Precedent for which it is a party responsible (as noted in clause 3.1):
  - (i) is satisfied as soon as practicable after the date of this document; and
  - (ii) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) there is no occurrence that would prevent the Condition Precedent for which it is a party responsible being satisfied.

### 3.3 Regulatory matters

Without limiting clause 3.2, Target RE, Bidder and the Guarantors:

- (a) **(copy of draft Regulatory Approvals)** must promptly provide the other party with a copy of all draft applications for any Regulatory Approval that has not already been applied for as at the date of this document and take all comments from the other party into account (in good faith);
- (b) **(applying for Regulatory Approvals)** must promptly apply for all relevant Regulatory Approvals for which it is a party responsible as noted in clause 3.1 (except that, in accordance with clause 5.3(e), Bidder must apply for the Regulatory Approvals set out in clauses 3.1(b)(i), 3.1(b)(ii) and 3.1(b)(iii)), and provide the other party with a copy of the applications for the Regulatory Approvals set out in clause 3.1 (other than those applications that have already been submitted as at the date of this document);
- (c) **(Regulatory Approvals process)** must take all steps it is responsible for as part of the Regulatory Approval process at the earliest practicable time, including responding to requests for information to the fullest extent it is legally able to do so;
- (d) **(resources)** must dedicate all resources necessary to apply for, and secure, the Regulatory Approvals for which it is a party responsible (as noted in clause 3.1);
- (e) **(notice and representation)** must give the other party reasonable notice of any proposed meetings with a Regulatory Authority in relation to any Regulatory Approval where such meetings are expected to relate to matters that are material to the Regulatory Approval process and, if the participation of the other party in any meeting is required by the relevant Regulatory Authority, use reasonable endeavours to procure that the relevant meeting is held at such time that will enable Representatives of the other party to attend;
- (f) **(consultation)** must, to the extent reasonably practicable and permitted by the relevant Regulatory Authorities, consult with the other parties in advance in relation to the process and progress of obtaining the Regulatory Approvals for which it is a party responsible (as noted in clause 3.1);
- (g) **(information)** subject to clause 10.7, must promptly provide the other party with all information:
  - (i) reasonably requested in connection with the applications for Regulatory Approvals, including responding to any follow-up questions or engaging in discussions in connection with applications and filings, provided that, in the case of Target RE, Target RE's involvement in making any regulatory filing will not require Target RE to:
    - (A) certify or otherwise confirm the accuracy of any information it has not provided for the purposes of the filing or which is included in a filing and materially differs in the form and context in which it was provided by Target RE; or
    - (B) assume any responsibility or liability whatsoever for any information provided by or conduct of any person other than Target RE in connection with the filing; and

- (ii) in respect of the progress in relation to obtaining the approval or consent, including:
  - (A) by providing Target RE with updates of such progress (including reasonable details of all dealings with Regulatory Authorities) no less than once per week and more frequently where Bidder or a Guarantor is engaged in a greater level of interaction with Regulatory Authorities than usual or in the periods leading up to any decision, or expected date of decision, by a Regulatory Authority; and
  - (B) any material information or matter which is likely to result in a delay in receipt of a Regulatory Approval that would mean the Timetable is unlikely to be achieved, or indicate that a Regulatory Approval is unlikely to be given; and
- (h) **(information requested by Regulatory Authority)** promptly provide to each Regulatory Authority all information requested by the Regulatory Authority in connection with the applications for Regulatory Approvals,

provided that information that is commercially sensitive information to a party, a Guarantor or any of their respective Related Bodies Corporate (acting reasonably) need not be provided to the other parties by redacting any such commercially sensitive information to the extent appropriate to avoid disclosure.

### 3.4 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a) and 3.1(e) cannot be waived.
- (b) Subject to clause 3.4(a), a Condition Precedent may only be waived in writing by the party or parties entitled to the benefit of that Condition Precedent as noted in clause 3.1 and will be effective only to the extent specifically set out in that waiver. If Target RE and Bidder are both entitled to the benefit of a Condition Precedent, then both parties must sign the waiver.
- (c) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.4 may do so in its absolute discretion.
- (d) If either Target RE or Bidder waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause 3.4, then:
  - (i) subject to clause 3.4(d)(ii), that waiver precludes that party from suing the other for any breach of this document arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but
  - (ii) if the waiver of the Condition Precedent is itself conditional and the other party:
    - (A) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with clause 3.4(d)(i); or
    - (B) does not accept the condition, the Condition Precedent has not been waived.



- (e) A waiver of a breach or non-fulfilment in respect of a Condition Precedent does not constitute:
  - (i) a waiver of a breach or non-fulfilment of any other Condition Precedent arising from the same event or circumstance; or
  - (ii) a waiver of a breach or non-fulfilment of that Condition Precedent resulting from any other event or circumstance.
- (f) The Condition Precedent in clause 3.1(d) (EU Merger Regulation) will automatically cease to apply and be automatically waived if:
  - (i) the Consortium Shareholder Resolutions of CKA are not approved by the requisite majority at the CKA Shareholder Meeting;
  - (ii) the Consortium Shareholder Resolutions of CKHH, CKI and PAH are not all approved by the requisite majority in general meetings convened by CKHH, CKI and PAH to consider the Consortium Shareholder Resolutions of CKHH, CKI or PAH (as applicable) in accordance with the HKEx Listing Rules; or
  - (iii) that Condition Precedent is not satisfied or waived on or before the date that is 7 days before the earlier of the Meeting Date and the 'Meeting Date' specified in the Timetable.
- (g) The Condition Precedent in clause 3.1(g) (CKA shareholder approval) will automatically cease to apply and be automatically waived if all of the following occur:
  - (i) the Consortium Shareholders Resolutions of CKA are approved by the requisite majority at the CKA Shareholder Meeting;
  - (ii) the Consortium Shareholders Resolutions of either or both of:
    - (A) CKHH and CKI; and
    - (B) PAH,

are approved by the requisite majority in general meetings convened by CKHH and CKI or by PAH (as applicable) to consider such Consortium Shareholder Resolutions in accordance with the HKEx Listing Rules; and
  - (iii) the European Commission take a decision (or are deemed to have taken a decision) under Article 6(1)(b) of the EU Merger Regulation declaring the Proposal and the Consortium Arrangements (or part thereof) compatible with the common market.

### 3.5 Notices in relation to Conditions Precedent

Target RE and Bidder must:

- (a) **(notice of satisfaction)** promptly notify the other party of satisfaction of a Condition Precedent and must keep the other party informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;
- (b) **(notice of failure)** immediately give written notice to the other party if it becomes aware of a breach or non-fulfilment of a Condition Precedent,

or if it becomes aware of any event which will prevent a Condition Precedent being satisfied;

- (c) **(notice of waiver)** upon receipt of a notice given under clause 3.5(b), give written notice to the other party as soon as possible (and in any event before 5.00pm on the day before the Second Judicial Advice Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question; and
- (d) **(Closing certificates)** on or prior to 8.00am on the Second Judicial Advice Date, provide to the other party a certificate in the form agreed in writing by Target RE and Bidder that states, where appropriate and in respect of matters within its knowledge, that the Conditions Precedent for which it is a party responsible (as noted in clause 3.1) have been satisfied or waived.

### **3.6 Consultation on failure of Condition Precedent**

If:

- (a) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this document by the time or date specified in this document for the satisfaction of the Condition Precedent; or
- (b) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this document for the satisfaction of the Condition Precedent (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this document),

Target RE and Bidder must consult in good faith with a view to determine whether:

- (c) the Proposal may proceed by way of alternative means or methods;
- (d) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court (being a date no later than 5 Business Days before the End Date);
- (e) to change the First Judicial Advice Date or to adjourn the application for the First Judicial Advice to another date agreed by Target RE and Bidder;
- (f) to change the Second Judicial Advice Date or to adjourn the application for the Second Judicial Advice to another date agreed by Target RE and Bidder; or
- (g) to extend the End Date.

### **3.7 Failure to agree**

- (a) If Target RE and Bidder are unable to reach agreement under clause 3.6 within 5 Business Days (or any shorter period ending at 5.00pm on the day before the Second Judicial Advice Date):
  - (i) subject to clause 3.7(a)(ii), either party may terminate this document (and that termination will be in accordance with clause 16.1(e)(i)); or

- (ii) if a Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this document (and that termination will be in accordance with clause 16.1(e)(ii)),

in each case before 8.00am on the Second Judicial Advice Date.

- (b) A party will not be entitled to terminate this document under this clause if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of a breach of this document by that party or a deliberate act or omission of that party.
- (c) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination or that apply as a result of or in connection with termination, on termination of this document, no party shall have any rights against or obligations to any other party under this document, except for those rights and obligations which accrued prior to termination.

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## **4 Outline of Proposal**

### **4.1 The Proposal**

Subject to, and in accordance with the Transaction Documents, on the Implementation Date:

- (a) all of the Target Securities will be transferred to Bidder; and
- (b) each Proposal Participant will be entitled to receive the Proposal Consideration.

### **4.2 Payment of Proposal Consideration**

Subject to the Transaction Documents, Bidder undertakes to Target RE (in its own right and separately as trustee or nominee of each Proposal Participant) that, in consideration of the transfer to Bidder of each Target Security held by a Proposal Participant, Bidder will:

- (a) on the Implementation Date, accept that transfer; and
- (b) pay or procure the payment of the Proposal Consideration in accordance with the Transaction Documents.

Where the calculation of the Proposal Consideration to be provided to a particular Proposal Participant would result in the Proposal Participant becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up or down (as applicable) to the nearest cent.

### **4.3 No amendment to the Proposal without consent**

Target RE must not consent to any modification of, or amendment to, the Proposal or any Transaction Document without the prior written consent of Bidder.

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## 5 Implementation obligations

### 5.1 General obligations

Target RE, Bidder and the Guarantors must each:

- (a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and
- (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),

to produce the Explanatory Memorandum and implement the Proposal as soon as reasonably practicable and in accordance with the Timetable.

### 5.2 Target RE's obligations

Target RE must take all reasonable steps to implement the Proposal on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

- (a) **(execute documents and perform acts)** execute all documents and do all acts and things within its power as may be necessary for the implementation and performance of the Proposal in accordance with the Transaction Documents;
- (b) **(preparation of Explanatory Memorandum)** prepare the Explanatory Memorandum in accordance with clause 7;
- (c) **(consultation with Bidder)** consult with Bidder as to the content and presentation of:
  - (i) the Explanatory Memorandum (accepting in each case that any draft of the Explanatory Memorandum provided to Bidder for review will not include those sections containing the Independent Expert's opinion and any review of the Independent Expert's Report by Bidder is limited to review for factual accuracy of those parts that include information relating to Bidder), which includes:
    - (A) allowing Bidder a reasonable opportunity to review and make comments on successive drafts of the Explanatory Memorandum, including a copy of the final form of the Explanatory Memorandum prior to the First Judicial Advice Date;
    - (B) taking any reasonable comments made by Bidder into account in good faith when producing revised drafts of the Explanatory Memorandum;
    - (C) providing to Bidder revised drafts of the Explanatory Memorandum within a reasonable time before the Regulator's Draft is provided to ASIC for review; and
    - (D) obtaining Bidder's consent to the inclusion of the Bidder Information in the Explanatory Memorandum (including in respect of the form and context in which the Bidder Information appears in the Explanatory Memorandum); and

- (ii) documents required for the purposes of seeking the Judicial Advice (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any reasonable comments on, or suggested amendments to, those documents from Bidder prior to filing those documents with the Court;
- (d) **(liaison with ASX)** as soon as reasonably practicable after the date of this document but no later than 7 days before the First Judicial Advice Date, provide drafts of each Supplemental Deed Poll to ASX for its review pursuant to ASX Listing Rule 15.1 and to Bidder, and (to the extent reasonably practicable) keep Bidder reasonably informed of any matters raised by ASX in relation to the draft Supplemental Deeds Poll (and any resolution of those matters), and use reasonable efforts, in co-operation with Bidder, to resolve any such matters;
- (e) **(Independent Expert)** promptly appoint the Independent Expert (if not already appointed) and provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare the Independent Expert's Report to be included in the Explanatory Memorandum;
- (f) **(lodgement of Regulator's Draft):**
  - (i) as soon as practicable after the date of this document, provide a draft copy of the Explanatory Memorandum to ASIC for its review and approval;
  - (ii) keep Bidder reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so, consult with Bidder in good faith prior to taking any steps or actions to address those material issues (provided that, where those issues relate to Bidder Information, Target RE must not take any steps to address them without the prior written consent of Bidder or a Guarantor, not to be unreasonably withheld); and
  - (iii) promptly provide to Bidder, and include in a revised draft of the Explanatory Memorandum, any new information not included in the Regulator's Draft which is required by the Corporations Act, Corporations Regulations, Regulatory Guide 74, Guidance Note 15 or the Listing Rules to be included in the Explanatory Memorandum;
- (g) **(supplementary disclosure)** if, after despatch of the Explanatory Memorandum, Target RE becomes aware:
  - (i) that information included in the Explanatory Memorandum is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
  - (ii) of information that is required to be disclosed to Target Securityholders under any applicable law but was not included in the Explanatory Memorandum,

Target RE must promptly consult with Bidder in good faith as to the need for, and the form of, any supplementary disclosure to Target Securityholders, and make any disclosure that Target RE considers reasonably necessary in the circumstances, having regard to applicable laws and to ensure that there would be no breach of clause 14.1(n) if it applied as at the date that information arose;

- (h) **(provide a copy of the Independent Expert's Report)** on receipt, provide Bidder with a copy of any draft or final report received from the Independent Expert (accepting in each case that any draft of the Explanatory Memorandum provided to Bidder for review will not include those sections containing the Independent Expert's opinion), and promptly give to the Independent Expert any comments that the Bidder provides Target RE in relation to factual matters regarding the Bidder or a Guarantor in any draft of the Independent Expert's Report (and Bidder acknowledges that Target RE otherwise has no obligation to ensure that the Independent Expert includes, and Target RE has no liability in any way if the Independent Expert does not include, any such comments from the Bidder in the Independent Expert's Report);
- (i) **(Registry details)** subject to the Corporations Act, privacy legislation and the terms of the Supplemental Deeds Poll, provide all necessary directions to the Registry to promptly provide any information that Bidder reasonably requests in relation to the Register, including any sub-register, and, where requested by Bidder, Target RE must procure such information to be provided to Bidder in such electronic form as is reasonably requested by Bidder or the Guarantors;
- (j) **(use of Bidder Information)** during the period until the Bidder Information (or any information solely derived from, or prepared solely in reliance on, the Bidder Information) becomes publicly available, only use that information in, and in preparing, the Explanatory Memorandum or otherwise with the prior written consent of Bidder (not to be unreasonably withheld or delayed);
- (k) **(approval of Explanatory Memorandum)** procure that a meeting of the Target RE Board is convened to consider approving the Explanatory Memorandum for despatch to the Target Securityholders;
- (l) **(Court application)** prepare the relevant Court documents and apply to the Court for the Judicial Advice;
- (m) **(print and despatch Explanatory Memorandum)** as soon as practicable after the First Judicial Advice Date print and send the Explanatory Memorandum and a proxy form to Target Securityholders in accordance with the Constitutions and the Listing Rules;
- (n) **(Meeting)** convene the Meeting and seek the approval of Target Securityholders of the Proposal Resolutions;
- (o) **(Supplemental Deeds Poll)** conditional on the passing of the Proposal Resolutions, execute each Supplemental Deed Poll;
- (p) **(Register)** if the Proposal becomes Effective close the Register as at the Record Date and determine the identity of Proposal Participants and their entitlements to Proposal Consideration;
- (q) **(instruments of transfer)** subject to Bidder satisfying its obligations under clause 4.2, on the Implementation Date:
  - (i) execute proper instruments of transfer and effect the transfer of Target Securities to Bidder in accordance with the Proposal; and
  - (ii) register all transfers of Target Securities held by Proposal Participants to Bidder;
- (r) **(Suspension of trading)** apply to ASX to suspend trading in Target Securities with effect from the close of trading on the Effective Date;

- (s) **(listing)** take all reasonable steps to maintain Target's listing on ASX and to maintain the quotation on ASX of Target Securities, notwithstanding any suspension of the quotation of Target Securities, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC;
- (t) **(Implementation of the Proposal)** if the Court grants the Second Judicial Advice, as soon as possible thereafter, and in any event by no later than 5.00pm on the Business Day after the Second Judicial Advice Date, or such other Business Day as Target RE and Bidder agree in writing, lodge with ASIC:
  - (i) a copy of each Supplemental Deed Poll in accordance with section 601GC(2) of the Corporations Act; and
  - (ii) if requested by ASIC, consolidated copies of each Constitution (as amended by the relevant Supplemental Deed Poll) in accordance with section 601GC(3) of the Corporations Act; and
- (u) **(other steps)** do all other things necessary to give effect to the Proposal and the orders of the Court granting the Judicial Advice.

### 5.3 Bidder's and Guarantors' obligations

Bidder and the Guarantors must take all reasonable steps to assist Target RE to implement the Proposal on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

- (a) **(execute documents and perform acts)** execute all documents and do all acts and things within their respective powers as may be necessary for the implementation and performance of the Proposal in accordance with the Transaction Documents;
- (b) **(Bidder Information)** as soon as practicable after the date of this document:
  - (i) prepare and promptly provide to Target RE a draft of the Bidder Information that Target RE reasonably requires to prepare and issue the Explanatory Memorandum (including any information required under the Corporations Act, Corporations Regulations, Guidance Note 15 or ASIC Regulatory Guide 74) for the purpose of enabling Target RE to review and comment on that draft information;
  - (ii) consider, acting reasonably and in good faith, the comments made by Target RE and its Representatives when producing any revised drafts of the Bidder Information;
  - (iii) provide Target RE with a revised draft of the Bidder Information within a reasonable time before the draft of the Explanatory Memorandum is finalised so as to enable Target RE to review it before finalisation and despatch of the Explanatory Memorandum to Target Securityholders; and
  - (iv) consent to the inclusion of the Bidder Information in the Explanatory Memorandum;
- (c) **(further Bidder Information)** promptly provide to Target RE any further or new Bidder Information that arises after the Explanatory Memorandum has been sent to Target Securityholders until the date of the Meeting that is necessary to ensure that the Bidder Information contained in the

Explanatory Memorandum is not, having regard to applicable disclosure requirements and the form and context in which the Bidder Information appears, misleading or deceptive in any material respect (including because of any material omission) and to ensure that there would be no breach of clause 14.3(h) if it applied as at the date on which such further or new Bidder Information arose;

- (d) **(use of Target Information)** during the period until the Target Information (or any information solely derived from, or prepared solely in reliance on, the Target Information) becomes publicly available, only use that information with the prior written consent of Target RE (not to be unreasonably withheld or delayed);
- (e) **(regulatory approvals)** promptly apply:
  - (i) to ASIC for a modification to the Corporations Act to enable all Target Securityholders (other than those excluded from voting because they are Associates of Bidder) to vote on the Proposal Resolutions pursuant to item 7 of section 611 of the Corporations Act;
  - (ii) to ASIC for an exemption in favour of both Target RE and Bidder (and their respective Controlled Entities) under Division 2 of Part 7.7 of the Corporations Act from the requirement to provide a financial services guide in connection with the Explanatory Memorandum;
  - (iii) to ASIC for a modification of, or exemption from, any requirement for Target RE or Bidder to comply with Division 5A of Part 7.9 of the Corporations Act in relation to any unsolicited offer to acquire Target Securities under the Proposal; and
  - (iv) for all other approvals of an Australian or foreign Regulatory Authority which Bidder and Target RE agree are necessary or desirable for Bidder to apply for to implement the Proposal, including any required or desirable competition or anti-trust filings;
- (f) **(Independent Expert information)** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report to be included in the Explanatory Memorandum;
- (g) **(review drafts of Explanatory Memorandum)** as soon as practicable after delivery, review drafts of the Explanatory Memorandum prepared by Target RE and provide comments on those drafts in good faith;
- (h) **(Deed Poll)** prior to the Explanatory Memorandum being sent to Target Securityholders, sign and deliver the Deed Poll;
- (i) **(liaison with ASIC)** provide reasonable assistance to Target RE to assist Target RE to resolve any matter raised by ASIC regarding the Explanatory Memorandum or the Proposal during its review of the Regulator's Draft;
- (j) **(Share transfer)** if the Proposal becomes Effective, accept a transfer of the Target Securities as contemplated by clause 4.2(a);
- (k) **(Proposal Consideration)** if the Proposal becomes Effective, pay or procure the payment of the Proposal Consideration in the manner and



amount contemplated by clause 4.2(b) and the terms of the Transaction Documents; and

- (l) **(all things necessary)** do all other things contemplated by or necessary to lawfully give effect to the Proposal and the orders of the Court granting the Judicial Advice.

#### **5.4 Target Group board changes**

- (a) On and from the Implementation Date, subject to clause 5.4(b) and Bidder having deposited, or procured the deposit of, the Proposal Consideration into the Target RE's trust account in accordance with the Transaction Documents, Target RE must:
  - (i) take all action necessary to procure that any Target RE Director designated by Bidder in writing, and any director of any member of the Target Group designated by Bidder in writing, resigns their office; and
  - (ii) cause the appointment to the Target RE Board and to the boards of each member of the Target Group of such persons as nominated by Bidder, subject to:
    - (A) those persons having provided a consent to act as directors of the relevant company or companies; and
    - (B) each proposed appointment being in compliance with Part 2D.3 of the Corporations Act.
- (b) Bidder must provide the necessary details of its nominees to the Target RE Board and to the boards of each member of the Target Group, together with their signed consents to act, by no later than the date of the Meeting.

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## **6 Permitted Distributions**

### **6.1 30 June 2018 Distribution**

Target RE must:

- (a) pay to Target Securityholders a cash distribution for the 6 month period from 1 January 2018 to 30 June 2018;
- (b) ensure that the distribution is paid to Target Securityholders on or about 12 September 2018;
- (c) ensure that the distribution is not more than \$0.24 per Target Security;
- (d) ensure that all of the APTIT Net Income for the period from 1 January 2018 to 30 June 2018 is paid to Target Securityholders as part of the distribution;
- (e) ensure that the 'Distributable Amount' of APTIT under the Constitution of APTIT for the period from 1 January 2018 to 30 June 2018 equals or exceeds the APTIT Net Income for that period, and that such 'Distributable Amount' is paid to Target Securityholders as part of the distribution; and
- (f) withhold any amounts required by law to be withheld from such cash distribution, without gross-up of any kind.

## 6.2 Special Distribution

If the Implementation Date occurs on a date after 31 December 2018, Target RE may pay to Target Securityholders a cash distribution subject to and in accordance with the following:

- (a) the cash distribution must not exceed A\$0.04 per Target Security for each full month between 31 December 2018 up to, and including, the Implementation Date (except that in respect of March 2019, if the Implementation Date occurs on or after 29 March 2019, A\$0.04 per Target Security shall be payable for March 2019);
- (b) the cash distribution must be paid to Target Securityholders on or prior to the Implementation Date;
- (c) the cash distribution must be funded solely from the Target's operating cash flows;
- (d) the cash distribution may otherwise be paid to Target Securityholders as determined by Target RE but consistent with past practice and having regard to the Constitutions; and
- (e) Target RE must withhold any amounts required by law to be withheld from such cash distribution, without gross-up of any kind.

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## 7 Explanatory Memorandum

### 7.1 Preparation

Without limiting clauses 5.2 or 5.3:

- (a) **(preparation)** Target RE is generally responsible for the preparation of the Explanatory Memorandum but will provide drafts to and consult with Bidder in accordance with clause 5.2(c)(i);
- (b) **(Target compliance)** Target RE must take all necessary steps to ensure that the Target Information:
  - (i) complies with the requirements of:
    - (A) the Corporations Act and the Corporations Regulations;
    - (B) Regulatory Guide 74;
    - (C) Guidance Note 15;
    - (D) the Listing Rules; and
    - (E) any other applicable law; and
  - (ii) is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (including because of any material omission); and
- (c) **(Bidder Information compliance)** Bidder must take all necessary steps to ensure that the Bidder Information:
  - (i) complies with the requirements of:
    - (A) the Corporations Act and the Corporations Regulations;

- (B) Regulatory Guide 74;
  - (C) Guidance Note 15;
  - (D) the Listing Rules; and
  - (E) any other applicable law; and
- (ii) is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (including because of any material omission).

## 7.2 Bidder Information

Bidder and each Guarantor:

- (a) must consult with Target RE as to the content of the Bidder Information;
- (b) must not unreasonably delay or withhold its consent to the inclusion of the Bidder Information in the form, content and context provided by Bidder in the Explanatory Memorandum;
- (c) acknowledges that it is responsible for ensuring that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise) and that Target RE will not verify or edit that information in the Explanatory Memorandum; and
- (d) must procure that a meeting of the Bidder Board is convened to approve, and does approve, those sections of the Explanatory Memorandum that comprise the Bidder Information as being in the form appropriate for despatch to Target Securityholders, and procure that all requisite approvals by the Guarantors are obtained to ensure the Bidder Information can be provided to Target RE for inclusion in the Explanatory Memorandum.

## 7.3 Explanatory Memorandum responsibility statement

Without limiting this clause 7, the Explanatory Memorandum must include a responsibility statement, in a form to be agreed by Bidder and Target RE, which will contain words to the effect that:

- (a) Target RE has provided, and is responsible for, the content of the Explanatory Memorandum other than, to the maximum extent permitted by law, the Bidder Information, the Independent Expert's Report or any other report or letter issued to Target RE by a third party, and the Bidder Indemnified Parties do not accept any responsibility for the accuracy or completeness of the Target Information;
- (b) Bidder and the Guarantors have prepared, and are responsible for, the Bidder Information in the Explanatory Memorandum (and no other part of the Explanatory Memorandum), and Target RE and the Target Indemnified Parties do not accept any responsibility for the accuracy or completeness of the Bidder Information; and
- (c) the Independent Expert has provided and is responsible for the Independent Expert's Report and that:
  - (i) Target RE and the Target Indemnified Parties do not assume any responsibility for the accuracy or completeness of the Independent Expert's Report; and

- (ii) Bidder and the Bidder Indemnified Parties do not assume any responsibility for the accuracy or completeness of the Independent Expert's Report.

#### **7.4 Disagreement on content of Explanatory Memorandum**

If Bidder and Target RE disagree on the form or content of the Explanatory Memorandum, they must consult in good faith to try to settle an agreed form of the Explanatory Memorandum. If complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of the Bidder Information contained in the Explanatory Memorandum, Target RE will make any amendments as Bidder reasonably requires; and
- (b) if the disagreement relates to the form or content of any other part of the Explanatory Memorandum, the Target RE Board will, acting in good faith, decide the final form or content of the disputed part of the Explanatory Memorandum.

#### **7.5 Verification**

- (a) Bidder must undertake appropriate verification processes for the Bidder Information in the Explanatory Memorandum.
- (b) Target RE must undertake appropriate verification processes for the Target Information in the Explanatory Memorandum.

#### **7.6 Judicial Advice proceedings**

Target RE and Bidder are entitled to separate representation at all Court proceedings relating to the Proposal. This document does not give Target RE or Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent. Target RE, Bidder and each Guarantor must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain the Judicial Advice as contemplated by this document.

#### **7.7 Appeal process**

If the Court refuses to grant the Judicial Advice, Bidder, Target RE and each Guarantor must appeal the Court's decision to the fullest extent possible except to the extent that:

- (a) the parties agree otherwise; or
- (b) an independent senior counsel of the New South Wales bar advises that, in their opinion, an appeal would have no reasonable prospect of success before the End Date,

in which case either Bidder or Target RE may terminate this document in accordance with clause 16.1(e)(iii).

#### **7.8 Transaction Implementation Committee**

Target RE and Bidder must establish a Transaction Implementation Committee as soon as reasonably practical after the date of this document. The role of the Transaction Implementation Committee will be to act as a forum for consultation and planning by the parties to implement the Proposal.

## 7.9 No partnership or joint venture

Subject to this document, nothing in this clause 7 requires Bidder and each Guarantor, and Target RE to act at the direction of the other. The business of Bidder and each Guarantor, and the Target Group will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this document constitutes the relationship of a partnership or a joint venture between the parties.

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## 8 Target RE Board's recommendations and intentions

### 8.1 Recommendation

- (a) The Transaction Announcement must state that the Target RE Board unanimously considers the Proposal to be in the best interests of Target Securityholders and recommend that Target Securityholders approve the Proposal, subject to:
- (i) the Independent Expert concluding, and continuing to conclude, that the Proposal is fair and reasonable and in the best interests of Target Securityholders; and
  - (ii) there being no Superior Proposal.
- (b) Target RE must use its best endeavours to procure that:
- (i) the Target RE Board collectively, and each Target RE Director individually, does not change or withdraw the statements and recommendation set out in the Transaction Announcement;
  - (ii) the Explanatory Memorandum states that the Target RE Board unanimously considers the Proposal to be in the best interests of Target Securityholders and recommends that Target Securityholders approve the Proposal (subject to those matters set out in clauses 8.1(a)(i) and 8.1(a)(ii)), and that no Target RE Director changes or withdraws those statements or recommendations once made; and
  - (iii) subject to clause 8.1(c), no Target RE Director makes any public statement or any statement to brokers, analysts, journalists, Target Securityholders or professional or institutional investors to the effect, or take any action that suggests, that the Proposal is no longer so considered or recommended,
- unless:
- (iv) the Independent Expert concludes in the Independent Expert's Report (including in any update to that report) that the Proposal is not fair and reasonable or that the Proposal is not in the best interests of Target Securityholders;
  - (v) there is a Superior Proposal; or
  - (vi) in relation to matters occurring after the date of this document, the Target RE Board determines in good faith and acting reasonably, having received advice in writing from its legal advisers, that it must not recommend or continue to recommend that Target Securityholders approve the Proposal because of any fiduciary or statutory duties to Target Securityholders, provided that:

- (A) the Target RE has first made reasonable endeavours to consult with Bidder as to the matters which would cause the Target RE Board to make such a determination; and
  - (B) the status of any Condition Precedent or any Regulatory Approval is not a matter that entitles the Target RE Board to not recommend or not to continue to recommend that Target Securityholders approve the Proposal.
- (c) Nothing in this document, including this clause 8, prevents, limits or restricts the Target RE, the Target or the Target RE Board making any comment, statement or announcement in relation to any Regulatory Approval (including those approvals required under clause 3) but only to the extent required to:
- (i) correct any factually incorrect statements made by any Third Party; or
  - (ii) provide Target Securityholders with updates regarding the status, or likely timing of receipt, of any such approvals,
- provided clause 17 is complied with.

## 8.2 Intentions

- (a) The Transaction Announcement and Explanatory Memorandum must state that, to the extent entitled, each Target RE Director who holds Target Securities, or who has control over voting rights attached to Target Securities, intends to vote in favour of the Proposal or to procure that the Target Securities the voting rights of which the Target RE Director has control over are voted in favour of the Proposal, subject to:
- (i) the Independent Expert concluding, and continuing to conclude, that the Proposal is fair and reasonable and in the best interests of Target Securityholders; and
  - (ii) there being no Superior Proposal.
- (b) Target RE must use its reasonable endeavours to ensure that each Target RE Director who holds Target Securities, or who has control over voting rights attaching to Target Securities:
- (i) publicly states that he or she intends, to the extent entitled and subject to those matters set out in clauses 8.2(a)(i) and 8.2(a)(ii), to vote in favour of the Proposal or to procure that the Target Securities the voting rights of which the Target RE Director has control over are voted in favour of the Proposal; and
  - (ii) does not change that voting intention,
- unless at least a majority of the Target RE Board ceases to recommend the Proposal pursuant to clause 8.1.

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## **9 Releases and insurance**

### **9.1 Release of Target Indemnified Parties**

Subject to the Corporations Act, Bidder and each Guarantor releases its rights, and agrees with Target RE that it will not make a Claim (and will procure that none of their Related Bodies Corporate make a Claim), against any Target Indemnified Party (other than Target RE and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:

- (a) any breach of any representations and warranties of Target RE, the Target or any other member of Target Group in this document; or
- (b) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except to the extent the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 9.1 limits Bidder's rights to terminate this document under clause 16.1.

### **9.2 Benefit for Target Indemnified Parties**

Target RE receives and holds the benefit of clause 9.1 to the extent it relates to each Target Indemnified Party on behalf of each of them.

### **9.3 Release of Bidder Indemnified Parties**

Subject to the Corporations Act, Target RE releases its rights, and agrees with Bidder that it will not make a Claim (and, prior to the Implementation Date, will procure that no member of the Target Group makes a Claim), against any Bidder Indemnified Party (other than Bidder) as at the date of this document and from time to time in connection with:

- (a) any breach of any representations and warranties of Bidder in this document; or
- (b) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except to the extent the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 9.3 limits Target RE's rights to terminate this document under clause 16.1.

### **9.4 Benefit for Bidder Indemnified Parties**

Bidder receives and holds the benefit of clause 9.3 to the extent it relates to each Bidder Indemnified Party on behalf of each of them.

### **9.5 Directors' and officers' insurance**

- (a) Bidder acknowledges that, notwithstanding any other provision of this document, Target RE and any member of the Target Group may, prior to the Implementation Date, enter into a run-off insurance policy in respect of any Target Indemnified Party for a 7 year period, and that any actions to facilitate that insurance or in connection therewith will not be a Target Prescribed Event or breach of any provision of this document, provided

that Target RE has not acted unreasonably in entering into any such policy.

- (b) Subject to the Proposal becoming Effective and having been implemented, Bidder and each Guarantor undertakes in favour of Target RE and each other person who is a Target Indemnified Party that, subject to clause 9.5(c), it will:
- (i) for a period of 7 years from the Implementation Date, ensure that the Constitutions and the constitutions of each other member of the Target Group continue to contain such rules as are contained in those constitutions as at the date of this document that provide for the indemnification of the applicable member of the Target Group and each of its directors and officers against any liability incurred by the applicable member of the Target Group or that person in his or her capacity as a director or officer of the applicable member of the Target Group to any person other than a member of the Bidder Group;
  - (ii) procure that Target RE and each other member of the Target Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that the directors' and officers' run-off insurance cover for those directors and officers is maintained on terms and conditions no less favourable than those entered into prior to the Implementation Date under clause 9.5(a), subject to clause 9.6, for a period of 7 years from the commencement date of such run-off insurance cover; and
  - (iii) not vary or cancel, or commit any act or omission that may prejudice any claim by a Target Indemnified Party under, any policy of insurance obtained in accordance with this clause 9.5.
- (c) The undertakings contained in clause 9.5(b) are subject to any Corporations Act restriction and will be read down accordingly.

## **9.6 Period of undertaking**

The undertakings contained in clause 9.5 are given until the earlier of the end of the relevant period specified in that clause or the relevant member of the Target Group ceasing to be part of the Bidder Group.

## **9.7 Benefit of undertaking for Target Group**

Target RE acknowledges that it receives and holds the benefit of clause 9.5 to the extent it relates to each director and officer of a member of the Target Group on behalf of each of them.

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# **10 Conduct of business and access**

## **10.1 Conduct of business**

Subject to clause 10.3, from the date of this document up to and including the Implementation Date, Target RE must ensure each member of the Target Group:

- (a) **(general)** conducts its business in the ordinary course and substantially consistent (subject to any applicable laws, regulations and regulatory approvals) with the manner in which each such business and operation has been conducted in the period prior to the date of this document and



in compliance in all material respects with all applicable laws, regulations and regulatory approvals;

- (b) **(business, assets, employees and relationships)** to the extent consistent with the obligation in clause 10.1(a), uses its best endeavours to:
  - (i) preserve intact the Target Group's current business organisation;
  - (ii) keep available the services of the current senior management team of the Target Group; and
  - (iii) preserve the Target Group's relationship with Government Agencies, ratings agencies, customers, suppliers, licensors, licensees, joint venturers and others having business dealings with it;
- (c) **(regulatory investigations)** consults with Bidder, and keep Bidder informed of, all material steps taken by the Target Group in connection with any material investigations or material reviews of the Target Group by any Government Agency on foot as at the date of this document or that commence after the date of this document; and
- (d) **(preserve liquidity)** preserves the liquidity of the Target Group in the ordinary course and consistent with past practice (provided, for the avoidance of doubt, that Target may use cash balances to pay down revolving facilities if it does so in the ordinary course and consistent with past practice and without cancelling the revolving facility limit).

## 10.2 Prohibited actions

Subject to clause 10.3, from the date of this document up to and including the Implementation Date, Target RE must not, and must ensure that each member of the Target Group does not:

- (a) **(employment agreements)** increase the remuneration of (including with regard to superannuation benefits) or benefits provided to, or pay any bonus (other than in accordance with existing arrangements and in the ordinary course), or otherwise vary the employment agreements with, any of its directors or employees, other than:
  - (i) as a result of annual remuneration reviews in accordance with past practice or as a result of promotions in the ordinary course;
  - (ii) as provided for in an existing employment contract in place as at the date of this document, provided that the aggregate of all such increases in remuneration or benefits does not exceed what has been Disclosed;
  - (iii) the payment of reasonable special service fees to any of its directors for their time spent on special board committee matters relating to the Proposal or the proposals or transactions involving one or more of the Guarantors leading up to the execution of this document or any Competing Transactions that may arise from time to time;
  - (iv) in relation to an employee of the Target Group who is not the Chief Executive Officer of the Target or any employee who is a direct report to the Chief Executive Officer of the Target, any payment of, or increase in, bonuses or other benefits granted in

accordance with past practice or in the ordinary course having regard to (and commensurate with) reasonable factors such as performance and workload;

- (v) in connection with any internal reorganisation of people or members of the Target Group undertaken in the ordinary course of business;
  - (vi) changes to the terms of any employment arrangements, or the agreement of new terms, in the ordinary course where such arrangements are being updated or made consistent with the usual terms and conditions of employment of the Target Group; or
  - (vii) paying a director, executive or employee a retention payment, provided that the aggregate of all such retention payments does not exceed the "Provision for retention payments" amount stated in the document contained at 1.5.16 of the Data Room;
- (b) **(accelerate rights)** accelerate the rights of any of its directors or employees to benefits of any kind;
  - (c) **(financial arrangements in respect of Proposal)** pay any financial and professional advisers and other professional service providers in respect of the Proposal, other than as provided in an existing contract, engagement or fee letters or written document that has been Disclosed;
  - (d) **(termination payments)** pay a director, executive or employee a termination payment, other than as provided for in an existing employment contract in place as at the date of this document;
  - (e) **(distributions)** announce, declare or pay any distributions, other than the 30 June 2018 Distribution, any Special Distribution or a distribution by a member of the Target Group other than APT and APTIT;
  - (f) **(Target Prescribed Event or Target Material Adverse Change)** take any action within its control that would, or would be reasonably be expected to, give rise to a Target Prescribed Event or Target Material Adverse Change;
  - (g) **(information technology)** take any action in respect of its information technology systems which would have a material adverse impact on those systems; or
  - (h) **(agree)** agree to do any of the matters set out above.

### 10.3 Exceptions to conduct of business provisions

Nothing in this clause 10 restricts the ability of Target RE, the Target, any other member of the Target Group or their respective Related Bodies Corporate or Representatives from taking any action which:

- (a) is expressly required or permitted by a Transaction Document, the Proposal, or otherwise required by law, the rules of a recognised securities exchange or a Regulatory Authority;
- (b) is to reasonably or prudently respond to an emergency or disaster or to address an occupational health and safety risk or issue that directly affects the Target Group's business (including, without limitation, a situation giving rise to a risk of personal injury or damage to its property or assets);

- (c) is necessary for Target RE or any other member of the Target Group to comply with any law or regulation, or change to any law or regulation, request or condition made by a Regulatory Authority applicable to the Target Group;
- (d) is required to terminate the employment of any employee of the Target Group for reasonable cause and replace such employee, in accordance with the Target Group's usual employment policies and processes;
- (e) is necessary for Target RE or any other member of the Target Group to meet a contractual obligation to make payments to any of its advisers in connection with the Proposal (provided in an existing contract that has been Disclosed) or to comply with an express statutory provision;
- (f) has been Disclosed;
- (g) has been agreed to in writing by Bidder or any Guarantor; or
- (h) in the case of a Target Joint Venture Entity, involves any action being undertaken or implemented by such a Target Joint Venture Entity in the ordinary course of its business, including if that action occurred with the approval or consent of (or any action taken by) the applicable Target JVE Member, but provided that in all cases no member of the Target Group, nor any person who represents or has been appointed by a member of the Target Group to the board of the Target Joint Venture Entity, acts in a manner that is inconsistent with this document (including not voting in favour of a matter which would constitute a Target Prescribed Event).

#### 10.4 Access to people and Target Information

Subject to clause 10.7, from the date of this document and up to and including the Implementation Date, Target RE must provide Bidder and the Guarantors (and their respective officers and advisers) with reasonable access to Target's officers and advisers and documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) which Bidder and any Guarantor reasonably requires for the purposes of:

- (a) the implementation of the Proposal (excluding any actual or proposed divestment of assets of the Target Group, including if required in connection with any Regulatory Approval);
- (b) seeking consents from any Regulatory Authority to facilitate compliance with any undertakings, commitments and conditions to which a Regulatory Approval is or is likely to be subject;
- (c) refinancing any Target Group debt facilities which may need to be repaid in connection with the Proposal;
- (d) requesting any member of the Target Group to seek any consents from, or make any notifications to, counter-parties to contracts that a member of the Target Group is party to and in respect of which Bidder or its external legal advisers have notified Target RE in writing on or before the date of this document that it requests the Target Group to seek a consent from the relevant counter-party in relation to rights that would be enlivened by implementation or proposed implementation of the Proposal (the **CoC Third Party Contracts**), provided that:
  - (i) Target RE is under no obligation to identify any contracts that are CoC Third Party Contracts;

- (ii) if Bidder notifies Target RE of any contract that it considers to be a CoC Third Party Contract, Bidder has informed Target RE as to why it considers the contract to be a CoC Third Party Contract; and
  - (iii) Bidder provides Target RE with any information requested by a counter-party to a CoC Third Party Contract and co-operates with Target RE in satisfying any conditions to the granting of a counter-party consent or conditions to a counter-party consent; and
- (e) any other purpose that is agreed in writing between the parties.

## 10.5 Third party consents

- (a) Target RE must apply for, and co-operate with Bidder in the seeking of, the counter-party consents notified pursuant to clause 10.4(d) and use its reasonable endeavours to obtain any such consents prior to the Implementation Date.
- (b) Bidder and each Guarantor agree and acknowledge that the failure to obtain the consent, or the obtaining of any consent which is subject to any condition (whether or not acceptable to Bidder or a Guarantor), of any counterparty to a CoC Third Party Contract prior to the Implementation Date does not, in any way, constitute or result in:
  - (i) a breach of this document by Target RE or the Target Group or otherwise give rise to any right for Bidder or a Guarantor to terminate any Transaction Document;
  - (ii) a Target Material Adverse Change or Target Prescribed Event; or
  - (iii) any liability on behalf of Target RE or any other Target Indemnified Party to, or for the benefit of, a member of the Bidder Group.

## 10.6 Additional right to access people and Target Information

- (a) Subject to clause 10.7, from the Effective Date and up to and including the Implementation Date, Target RE must provide Bidder and the Guarantors (and their respective officers and advisers) with reasonable access to Target's officers and advisers and documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) which Bidder and any Guarantor reasonably requires for the purposes of planning for the integration of the Target Group and Bidder following the implementation of the Proposal (including any actual or proposed divestment of assets of the Target Group).
- (b) Subject to clause 10.7, from the date which is the Business Day after the last of the Conditions Precedent in clauses 3.1(a) and 3.1(c) is satisfied or waived and up to and including the Implementation Date, Target RE must provide Bidder and the Guarantors (and their respective officers and advisers) with reasonable access to, subject to the terms of any protocols specified by Target RE (acting reasonably) relating to such access, a list of Target's officers and advisers (as agreed by Target RE and Bidder (acting reasonably)) and documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, applicable privacy laws or applicable competition or anti-trust laws) which Bidder and any Guarantor reasonably requires for the

purposes of preparing for any actual or proposed divestment of assets of the Target Group to facilitate compliance with any undertakings, commitments and conditions to which a Regulatory Approval is subject, other than to the extent such activities require the disclosure of confidential information to Third Parties or seeking Third Party consents or approvals not otherwise covered by clause 10.4(d).

## **10.7 Provision of information and access**

Despite anything else in this document, Target RE, any other member of the Target Group, or any of their respective Representatives will not be required to provide any information or access to Bidder or the Guarantors (or their respective officers and advisers) under this document unless Target RE is satisfied, acting reasonably and in good faith, that the provision of such information or access would not have a materially adverse effect on Target RE, any other member of the Target Group, or any of their respective or collective businesses.

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# **11 Exclusivity**

## **11.1 No existing discussion**

Target RE represents and warrants that, as at the date of this document, it is not in any negotiations or discussions in respect of any Competing Transaction.

## **11.2 No-shop**

During the Exclusivity Period, Target RE must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) solicits, invites, encourages or initiates any Competing Transaction or any enquiries, negotiations or discussions; or
- (b) communicates any intention to do any of these things,

with a view to, or that may reasonably be expected to lead to, obtaining any offer, proposal or expression of interest from any person in relation to a Competing Transaction.

## **11.3 No-talk**

Subject to clauses 11.5 and 11.6, during the Exclusivity Period, Target RE must ensure that neither it nor any of its Representatives:

- (a) negotiates or enters into; or
- (b) participates in negotiations or discussions with any other person regarding,

a Competing Transaction or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by Target RE or any of its Representatives or the person has publicly announced the Competing Transaction.

## **11.4 Due diligence information**

Subject to clauses 11.5 and 11.6, during the Exclusivity Period, Target RE must ensure that neither it nor any of its Representatives in relation to a Competing Transaction:

- (a) enables any person other than Bidder and the Guarantors to undertake due diligence investigations on any member of the Target Group or their businesses or operations; or
- (b) makes available to any other person, or permits any other person to receive, other than Bidder and the Guarantors (in the course of due diligence investigations or otherwise) any non-public information relating to any member of the Target Group or their businesses or operations.

## 11.5 Exceptions

Clause 11.3 and clause 11.4 do not apply to the extent that they restrict Target RE or the Target RE Board from taking or refusing to take any action with respect to a genuine Competing Transaction (which was not solicited, invited, encouraged or initiated by Target RE in contravention of clause 11.2) provided that the Target RE Board has determined, in good faith and acting reasonably, and after receiving written legal advice from its external legal advisers, that failing to respond to such a genuine Competing Transaction would, or would be reasonably likely to, constitute a breach of the Target RE Board's fiduciary or statutory obligations.

## 11.6 Further exceptions

Nothing in this document prevents Target RE, any other member of the Target Group or any of their respective Representatives from:

- (a) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Proposal or its business generally;
- (b) fulfilling its continuous disclosure requirements or otherwise providing information to ASX or any other Government Agency;
- (c) providing information to its Representatives acting in that capacity in connection with the Proposal or a Competing Transaction;
- (d) providing information to its auditors, advisors, customers, joint venturers and suppliers acting in that capacity in the ordinary course of business; or
- (e) providing information required to be provided by law or any Government Agency.

## 11.7 Notifications

During the Exclusivity Period Target RE must promptly inform Bidder if it, or any of its Related Bodies Corporate or Representatives, receives any unsolicited approach with respect to any Competing Transaction and must disclose to Bidder the fact that such an approach has been made and the general nature of the approach (but nothing in this clause 11.7 requires Target RE to disclose the identity of the party who has made the unsolicited approach).

## 11.8 Matching right

Without limiting clauses 11.2, 11.3 and 11.4, during the Exclusivity Period Target RE:

- (a) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, Target RE or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Transaction; and

- (b) must use its best endeavours to procure that none of the directors of Target RE change their recommendation in favour of the Proposal to publicly recommend an actual, proposed or potential Competing Transaction (or recommend against the Proposal),

unless:

- (c) Target RE has provided Bidder with the material terms and conditions of the actual, proposed or potential Competing Transaction, including details of the proposed price or implied value (including details of the consideration if not simply cash), conditions precedent, timing, break fee (if any) and the identity of the Third Party making the actual, proposed or potential Competing Transaction;
- (d) Target RE has given Bidder at least 5 Business Days after the date of the provision of the information referred to in clause 11.8(c) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction; and
- (e) Bidder has not announced or otherwise formally proposed to Target RE a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction by the expiry of the 5 Business Day period referred to in clause 11.8(d).

Any modification made by a Third Party to any Competing Transaction (which will include any modification made by a Third Party relating to the price or value of any Competing Transaction) will be taken to make that proposal a new Competing Transaction in respect of which Target RE must comply with its obligations under this clause 11.8 again.

## 11.9 Bidder counterproposal

If Bidder proposes to Target RE, or announces amendments to the Proposal that constitutes a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction (**Bidder Counterproposal**) by the expiry of the 5 Business Day period referred to in clause 11.8(d), Target RE must procure that the Target RE Board considers the Bidder Counterproposal and if the Target RE Board, acting reasonably and in good faith, determines that the Bidder Counterproposal would provide an equivalent or superior outcome for Target Securityholders as a whole compared with the Competing Transaction, taking into account all of the terms and conditions of the Bidder Counterproposal, then:

- (a) Target RE and Bidder must use their best endeavours to agree the amendments to the Transaction Documents that are reasonably necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable; and
- (b) Target RE must use its best endeavours to procure that each member of the Target RE Board continues to recommend the Proposal (as modified by the Bidder Counterproposal) to Target Securityholders and to not recommend the Competing Transaction.

## 11.10 Provision of non-public information

During the Exclusivity Period, Target RE must as soon as possible provide Bidder with:

- (a) in the case of written materials, a copy of; and
- (b) in any other case, a written statement of,

any non-public information about the business or affairs of the Target Group disclosed or otherwise provided to any Third Party in connection with an actual, proposed or potential Competing Transaction that has not previously been provided to Bidder or its Representatives, provided that:

- (c) such information is material in the context of the Target Group, taken as a whole; and
- (d) information that relates to areas, assets or operations where the Target and Bidder Group compete, or which Target RE considers (acting reasonably) it cannot or should not provide to Bidder having regard to applicable laws or the actual or potential requirements of any Regulatory Authority, need not be provided to Bidder or its Representatives.

For the avoidance of doubt, any such provision of information to a Third Party may only be undertaken if permitted under clause 11.5.

### 11.11 Legal advice

Target RE acknowledges that it has received legal advice on this document and the operation of this clause.

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## 12 Break Fee

### 12.1 Background

This clause has been agreed in circumstances where:

- (a) Bidder, each Guarantor and Target RE believe that the Proposal will provide significant benefits to Bidder, each Guarantor, Target and Target Securityholders, and Bidder, each Guarantor and Target RE acknowledge that, if they enter into this document and the Proposal is subsequently not implemented, Bidder will incur significant costs, including those set out in clause 12.5;
- (b) Bidder requested that provision be made for the Break Fee, without which Bidder would not have entered into this document;
- (c) both the Bidder Board and Target RE Board believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure Bidder's participation in the Proposal; and
- (d) the parties have received legal advice on this document and the operation of this clause.

### 12.2 Payment by Target RE to Bidder

Target RE agrees to pay the Break Fee to Bidder if:

- (a) **(change of recommendation)** at least a majority of the Target RE Directors fail to recommend to the Target Securityholders that they vote in favour of the Proposal or Proposal Resolutions or, having made such recommendation, withdraws their recommendation or adversely changes their recommendation, provided that in each case Bidder has terminated this document, except where:
  - (i) the Independent Expert does not conclude, or does not continue to conclude, that the Proposal is fair and reasonable and in the



best interests of Target Securityholders (other than where the reason for that opinion is a Competing Transaction);

- (ii) Target RE has validly terminated, or has the right to terminate, this document in accordance with clause 16.1(d); or
  - (iii) there has been a failure of a Condition Precedent in clause 3.1, other than as a result of a breach by Target RE of clause 3.2;
- (b) **(Competing Transaction)** a Competing Transaction within paragraphs (b) or (c) of the definition of Competing Transaction is announced or made prior to the Second Judicial Advice Date and completed in accordance with its terms at any time within 9 months after the date of this document; or
- (c) **(termination)** Bidder validly terminates this document in accordance with clause 16.1(d).

### 12.3 No amount payable

If:

- (a) the Proposal becomes Effective;
- (b) the Target RE Board, acting reasonably and in good faith, determines that a Bidder Counterproposal would provide an equivalent or superior outcome for Target Securityholders as a whole compared with the Competing Transaction under clause 11.9 and recommends that Target Securityholders approve or accept the Bidder Counterproposal, subject only to qualifications of the type set out in clauses 8.1(a)(i) and 8.1(a)(ii);
- (c) Target RE has agreed the terms of a Bidder Alternative Transaction and the Target RE Board has publicly stated that the Target RE Board unanimously considers that a Bidder Alternative Transaction to be in the best interests of Target Securityholders and recommends that Target Securityholders approve or accept the Bidder Alternative Transaction, subject only to qualifications of the type set out in clauses 8.1(a)(i) and 8.1(a)(ii); or
- (d) at the time that the Break Fee becomes payable under clause 12.2 or at the time this document is terminated, Target RE was entitled to terminate this document under clause 16.1(d),

then, notwithstanding the occurrence of any event in clause 12.2:

- (e) no amount is payable by Target RE under clause 12.2; and
- (f) if any amount has already been paid under clause 12.2 it must be refunded by Bidder.

### 12.4 Timing of payment

- (a) A demand by Bidder for payment of the Break Fee under clause 12.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment (which, if clause 11.8 applies, does not occur unless and until the period for a Bidder

Counterproposal has expired and no Bidder Counterproposal has been made);

- (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account in the name of Bidder into which Target RE must pay the Break Fee.
- (b) Target RE must pay the Break Fee to Bidder under clause 12.2 within 5 Business Days of receipt by Target RE of a valid demand for payment from Bidder under clause 12.4(a).

The demand may only be made after the occurrence of an event referred to in clause 12.2.

## **12.5 Nature of payment**

- (a) The Break Fee is an amount to compensate Bidder for:
- (i) advisory costs;
  - (ii) costs of management and directors' time;
  - (iii) out-of-pocket expenses;
  - (iv) reasonable opportunity costs incurred by Bidder in pursuing the Proposal or in not pursuing alternative acquisitions or strategic initiatives which Bidder could have developed to further its business and objectives; and
  - (v) damage to Bidder's reputation associated with a failed transaction and the implications of that damage to Bidder's business.
- (b) The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 12.2.
- (c) Despite any other term of this document, the Break Fee is only payable once.

## **12.6 Target RE's limitation of liability**

Notwithstanding any other provision of this document but subject to clauses 12.6(d), 12.7 and 19.2:

- (a) the maximum liability of Target RE and the Target Indemnified Parties to Bidder and the Guarantors, collectively, under or in connection with this document including in respect of any breach of this document will be either:
- (i) A\$50,000,000; or
  - (ii) if the Break Fee is payable under clause 12.2(a) or 12.2(b), A\$130,000,000;
- (b) the payment by Target RE of the Break Fee represents the sole remedy of Bidder and the Guarantors and the sole and absolute amount of liability of Target RE and the Target Indemnified Parties under or in connection with this document and no further damages, fees, expenses

or reimbursements of any kind will be payable by Target RE and the Target Indemnified Parties in connection with this document;

- (c) the Break Fee is reduced by an amount equal to the amount which is recovered by Bidder as a result of a claim against Target RE pursuant to any other remedies available to Bidder under this document including pursuant to clause 14.1; and
- (d) where the Break Fee has already been paid, Bidder must, within 2 Business Days of the event contemplated by clause 12.6(c) which would have reduced the amount payable, refund an amount to Target RE which is equivalent to that calculated under clause 12.6(c).

## **12.7 Compliance with law**

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the amount payable under clause 12.2:

- (a) is unlawful or would if performed be, unlawful;
- (b) involves a breach of the duties of the Target RE Board; or
- (c) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then Target RE's obligation to pay the applicable amount or part of the amount payable under clause 12.2 does not apply and if Bidder or any Guarantor has received any such part of the payment due under clause 12.2 it must refund it within 5 Business Days of such final determination.

No party is entitled to make or cause or permit to be made any application to a Court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in this clause 12.7.

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## **13 Reverse Break Fee**

### **13.1 Background**

This clause has been agreed in circumstances where:

- (a) Bidder, each Guarantor and Target RE believe that the Proposal will provide significant benefits to Bidder, each Guarantor, Target and the Target Securityholders, and Bidder, each Guarantor and Target RE acknowledge that, if they enter into this document and the Proposal is subsequently not implemented, Target RE and Target Securityholders will incur significant costs including those set out in clause 13.5;
- (b) Target RE requested that provision be made for the payment of the Reverse Break Fee, without which Target RE would not have entered into this document;
- (c) both the Bidder Board and Target RE Board believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure Target RE's participation in the Proposal; and
- (d) the parties have received legal advice on this document and the operation of this clause.

### **13.2 Payment by Bidder to Target RE**

Bidder agrees to pay the Reverse Break Fee to Target RE without withholding or set-off if:

- (a) both of the following occur:
  - (i) CKA has not procured the Voting Undertaking or the Trustees fail to vote in favour of the CKA Shareholder Resolution in accordance with the Voting Undertaking; and
  - (ii) the CKA Shareholder Meeting is held and the CKA Shareholder Resolution is not approved by the requisite majority at the CKA Shareholder Meeting; or
- (b) Target RE validly terminates this document in accordance with clause 16.1(d).

### **13.3 No amount payable**

If:

- (a) the Proposal becomes Effective;
  - (b) as at the earlier of the date of termination of this document and the End Date, Bidder was entitled to terminate this document under clause 16.1(d); or
  - (c) the events in sub-paragraphs (i) and (ii) of clause 3.4(g) have occurred,
- then, notwithstanding the occurrence of any event in clause 13.2:
- (d) no amount is payable by Bidder under clause 13.2; and
  - (e) if any amount has already been paid under clause 13.2 it must be refunded by Target RE.

### **13.4 Timing of payment**

- (a) A demand by Target RE for payment of the Reverse Break Fee under clause 13.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account in the name of Target RE into which Bidder must pay the Reverse Break Fee.
- (b) Bidder must pay the Reverse Break Fee to Target RE without withholding or set off within 5 Business Days of receipt by Bidder of a valid demand for payment from Target RE under clause 13.4(a).

The demand may only be made after the occurrence of an event referred to in clause 13.2.

### 13.5 Nature of payment

The Reverse Break Fee is an amount to compensate Target RE for some or all of the following:

- (a) advisory costs;
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) the distraction of Target RE's management from conducting Target's business as usual caused by pursuing the Proposal;
- (e) reasonable opportunity costs incurred by Target RE in pursuing the Proposal or in not pursuing strategic initiatives which Target RE could have developed to further the business and objectives of the Target; and
- (f) damage to the Target Group's reputation associated with a failed transaction and the implications of that damage to the Target Group's business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 13.2.

### 13.6 Bidder's limitation of liability

- (a) Notwithstanding any other provision of this document:
  - (i) the maximum aggregate liability of Bidder and the Bidder Indemnified Parties to Target RE under or in connection with this document including in respect of any breach of this document will be A\$50,000,000;
  - (ii) the payment by Bidder or the Guarantors of the Reverse Break Fee represents the sole remedy of Target RE and the sole and absolute aggregate liability of Bidder and the Bidder Indemnified Parties under or in connection with this document and no further damages, fees, expenses or reimbursements of any kind will be payable by Bidder or the Bidder Indemnified Parties under or in connection with this document;
  - (iii) the Reverse Break Fee is reduced by an amount equal to the amount which is recovered by Target RE as a result of a claim against Bidder or any Bidder Indemnified Party pursuant to any other remedies available to Target RE under this document including pursuant to clause 14.3; and
  - (iv) where the Reverse Break Fee has already been paid, Target RE must, within 2 Business Days of the event contemplated by clause 13.6(a)(iii) which would have reduced the amount payable, refund an amount to Bidder which is equivalent to that calculated under clause 13.6(a)(iii).
- (b) Nothing in this clause limits Bidder's liability to make payments under clause 4.2, or any of the other Transaction Documents, if the Proposal becomes Effective.

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## 14 Representations and warranties

### 14.1 Target RE's representations and warranties

Target RE represents and warrants to Bidder (on its own behalf and separately as trustee or nominee for each of the Bidder directors) that, except as Disclosed, each of the following statements is true and correct on each date on and from the date of this document until (and including) 8.00am on the Second Judicial Advice Date (except where that representation or warranty is expressed to be given at a particular time, in which case it is given at that time):

- (a) **(status)** Target RE has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(valid trusts)** Target comprises two validly subsisting trusts, each properly constituted and registered as a managed investment scheme in accordance with Chapter 5C of the Corporations Act;
- (c) **(responsible entity)** Target RE is:
  - (i) the responsible entity of each of APT and APTIT in terms of Chapter 5C of the Corporations Act;
  - (ii) the sole trustee of the Target and, to the best of Target RE's knowledge and belief, no action has been taken or proposed to be taken to remove it as trustee or responsible entity of the Target; and
  - (iii) the holder of an Australian Financial Services Licence which authorises it to operate the Target and no condition of that licence has been breached in any material respect;
- (d) **(no termination or winding up of trust)** to the best of Target RE's knowledge and belief, as at the date of this document no action has been taken to either:
  - (i) terminate APT or APTIT; or
  - (ii) wind up APT or APTIT whether under Chapter 5C of the Corporations Act or otherwise,other than any frivolous or vexatious application, or any application that is set aside within 14 days or, if earlier, by the Second Judicial Advice Date;
- (e) **(no restriction of powers)** Target RE has not exercised its powers under either Constitution to release, abandon or restrict in any material respect having regard to the Proposal any power conferred on it by either Constitution;
- (f) **(no Constitution default)** Target RE is not in default under clause 9 (Income and Distributions) or clause 15 (Alterations to Trust) of either Constitution;
- (g) **(right to be indemnified)** subject to law and the Constitutions, to the best of Target RE's knowledge and belief, Target RE has the right to be fully indemnified out of the Trust Property in respect of the obligations incurred by it as responsible entity of each of APT and APTIT under the documents to which it is a party, and, to the best of Target RE's knowledge and belief, there is nothing that would prevent Target RE from being fully indemnified out of the Trust Property for any obligations under

or in connection with this document or any of the transactions contemplated by this document that it incurs in its capacity as responsible entity of APT or APTIT;

- (h) **(capacity)** Target RE has full legal capacity and power to enter into this document and to carry out the transactions that this document contemplates;
- (i) **(corporate authority)** Target RE has taken all corporate action that is necessary or desirable to authorise its entry into this document and its carrying out of the transactions that this document contemplates;
- (j) **(Constitutions)** Target RE is authorised under the terms of the Constitutions to enter into and give effect to the terms and conditions of this document and to carry out the transactions contemplated by this document;
- (k) **(authorisations)** Target RE holds each authorisation that is necessary to:
  - (i) execute this document and to carry out the transactions that this document contemplates; and
  - (ii) ensure that this document is legal, valid, binding and admissible in evidence;
- (l) **(agreement effective)** this document constitutes legal, valid and binding obligations, enforceable against Target RE in accordance with its terms, subject to any necessary stamping or registration, and laws generally affecting creditors' rights and principles of equity;
- (m) **(reliance)** the Target Information contained in the Explanatory Memorandum will be included in good faith and on the understanding that Bidder and its directors will rely on that information for the purposes of considering and approving the Bidder Information in the Explanatory Memorandum;
- (n) **(Target Information)** the Target Information provided in accordance with this document and included in the Explanatory Memorandum as at the date of the Explanatory Memorandum does not contain any statements which are misleading or deceptive, or likely to mislead or deceive, in any material respect and do not omit any information having regard to applicable disclosure requirements;
- (o) **(disclosure obligations)** on the date of this document, the First Judicial Advice Date, the Meeting Date and the Second Judicial Advice Date, following the release by Target RE of the Transaction Announcement, to the best of Target RE's knowledge and belief, Target RE is not in breach of any provision of Chapter 3 of the ASX Listing Rules and is not withholding any information from Bidder that is being withheld from public disclosure in reliance on ASX Listing Rule 3.1A;
- (p) **(Due Diligence Materials):**
  - (i) all the information provided to Bidder by Target RE in the Due Diligence Materials has been prepared and provided in good faith;
  - (ii) Target RE has not intentionally withheld from the Due Diligence Materials any material information in the Target Group's possession which was requested in writing by Bidder, the

Guarantors or their respective Representatives (except to the extent where, prior to the date of this document, Target RE explained to Bidder, the Guarantors or their respective Representatives what material information has been withheld); and

- (iii) Target RE has not intentionally included in the Due Diligence Materials any information that is misleading in any material respect;
- (q) **(compliance)** to the best of Target RE's knowledge and belief and except as Disclosed, the Target Group has complied in all material respects, and is not in contravention of, in any respect that is material to the Proposal or the Target Group:
- (i) any law to which it is subject or any order of any Government Agency that is binding on it;
  - (ii) any ruling, court decree, undertaking or instrument binding on, or applicable to, Target RE or the Target Group;
  - (iii) any Encumbrance, instrument or document which is binding on Target RE or any of its assets; or
  - (iv) the Constitutions;
- (r) **(provision of information to Independent Expert)** all information provided by or on behalf of Target RE to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (s) **(no default)** to the best of Target RE's knowledge and belief and except:
- (i) as Disclosed;
  - (ii) as a result of entering into a Transaction Document; or
  - (iii) as a result of the Proposal,
- as at the date of this document:
- (iv) no member of the Target Group is in default under any document, agreement or instrument binding on it or its assets;
  - (v) nor has anything occurred which is or would, with the giving of notice or lapse of time, constitute (nor will the entering into by Target RE of this document, or the execution of its terms by Target RE constitute (whether immediately or following the giving of notice or the lapse of time)) an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under any document, agreement or instrument,
- provided that, the document, agreement or instrument generates, or is expected to generate:
- (vi) annual revenue for the Target Group in excess of A\$50 million individually or A\$150 million when aggregated with all



documents, agreements or instruments to which this clause relates; or

- (vii) gross annual expenditure for the Target Group in excess of A\$20 million individually or A\$100 million when aggregated with all documents, agreements or instruments to which this clause relates;
- (t) **(securities)** Target's issued securities as at the date of this document are 1,179,893,848 Target Securities each of which is fully paid up, and other than as Disclosed no member of the Target Group has issued or agreed to issue (or is actually or contingently required to issue) any other securities or instruments which are still outstanding (or may become outstanding) and which may convert into Target Securities;
- (u) **(no Encumbrances)** except as Disclosed or otherwise shown on the PPSR as at 4 July 2018, there are no material Encumbrances over all or any of the Target's assets or revenues;
- (v) **(regulatory issues and litigation)** to the best of Target RE's knowledge and belief and other than as Disclosed, as at the date of this document:
  - (i) neither ASIC nor ASX (as applicable) has made a determination against any member of the Target Group for any material contravention of the requirements of the Corporations Act or the Listing Rules or any rules or regulations under the Corporations Act or the Listing Rules;
  - (ii) there is no litigation, prosecution, mediation, arbitration or other proceeding in respect of the Target Group which is material taking into account the operations of the Target Group as a whole;
  - (iii) the Target Group has not received any written notice of a Claim threatening the commencement of any litigation, prosecution, mediation, arbitration or other proceeding in respect of any of the business operated by the Target Group and which is material taking into account the operations of the Target Group as a whole; and
  - (iv) there are no unfulfilled or unsatisfied judgments relating to the business outstanding against the Target Group; and
- (w) **(solvency)** no member of the Target Group is Insolvent.

## 14.2 Target RE's indemnity

Target RE indemnifies the Bidder Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 14.1 not being true and correct.

### 14.3 Bidder's representations and warranties

Bidder represents and warrants to Target RE (on its own behalf and separately as trustee or nominee for each of the Target RE directors) that each of the following statements is true and correct on each date on and from the date of this document until (and including) 8.00am on the Second Judicial Advice Date (except where that representation or warranty is expressed to be given at a particular time, in which case it is given at that time):

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(capacity)** it has full legal capacity and power to enter into this document and to carry out the transactions that this document contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this document and its carrying out of the transactions that this document contemplates;
- (d) **(constitution)** it is authorised under the terms of its constituent documents to enter into and give effect to the terms and conditions of this document and to carry out the transactions contemplated by this document;
- (e) **(authorisations)** it holds each authorisation that is necessary for it to:
  - (i) execute this document and to carry out the transactions that this document contemplates; and
  - (ii) ensure that this document is legal, valid, binding and admissible in evidence;
- (f) **(agreement effective)** this document constitutes legal, valid and binding obligations, enforceable against it in accordance with its terms, subject to any necessary stamping or registration, and laws generally affecting creditors' rights and principles of equity;
- (g) **(reliance)** the Bidder Information provided to Target RE for inclusion in the Explanatory Memorandum will be provided in good faith and on the understanding that Target RE and its directors will rely on that information for the purposes of preparing the Explanatory Memorandum and proposing and implementing the Proposal;
- (h) **(Bidder Information)** the Bidder Information provided in accordance with this document and included in the Explanatory Memorandum, as at the date of the Explanatory Memorandum does not contain any statements which are misleading or deceptive, or likely to mislead or deceive, in any material respect and do not omit any information having regard to applicable disclosure requirements;
- (i) **(no violation)** to the best of Bidder's knowledge and belief, the execution and performance by Bidder of this document and each transaction contemplated by this document does not and will not violate in any respect:
  - (i) any law to which it is subject or any order of any Government Agency that is binding on it;
  - (ii) any ruling, court decree, undertaking or instrument binding on, or applicable to, Bidder;

- (iii) any Encumbrance, instrument or document which is binding on Bidder or any of its assets; or
- (iv) its constituent documents;
- (j) **(opinions)** any statement of opinion or belief contained in the Bidder Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (k) **(no dealing with Target Securityholders)** it does not have any agreement, arrangement or understanding with any Target Securityholder under which that Target Securityholder (or an associate of that Target Securityholder) would be entitled to receive consideration for their Target Securities different from the Proposal Consideration or under which the Target Securityholder agrees to vote in favour of the Proposal or against any Competing Transaction;
- (l) **(no Relevant Interest)** it does not have a Relevant Interest in Target Securities;
- (m) **(reasonable basis)** it has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy Bidder's obligations to pay the Proposal Consideration in accordance with its obligations under this document and the Deed Poll;
- (n) **(provision of information to Independent Expert)** all information provided by or on behalf of Bidder to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (o) **(unconditional cash reserves on the Second Judicial Advice Date and the Implementation Date)** by 8.00am on the Second Judicial Advice Date and on the Implementation Date, Bidder will have available to it on an unconditional basis (other than, on the Second Judicial Advice Date, conditions relating to the approval of the Court and other conditions within the sole control of Bidder) sufficient cash reserves (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy Bidder's obligations to pay the Proposal Consideration in accordance with its obligations under this document and the Deed Poll;
- (p) **(solvency)** it is not Insolvent;
- (q) **(no default)** to the best of Bidder's knowledge and belief, this document does not conflict with or result in the breach of or a default under any document, agreement or instrument to which Bidder is party and which would prevent Bidder from performing its obligations under the Transaction Documents; and
- (r) **(Li family interest in CKA)** based on disclosures of substantial shareholdings filings made pursuant to Part XV of the Hong Kong Securities and Futures Ordinance (Cap. 571) up to the date immediately preceding the date of this document, the trustees of the Li family trusts and/or their relevant subsidiaries (the **Trustees**) hold 1,028,753,254 number of shares of CKA (the **Trustees' CKA Shares**) which as at the date of this document represent approximately 27.82% of the issued share capital and voting rights in CKA and, so far as is known to any

director of CKA as at the date of this document, there is no intention on the part of the Trustees to dispose of any of the Trustees' CKA Shares.

#### **14.4 Bidder's indemnity**

Bidder indemnifies the Target Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 14.3 not being true and correct.

#### **14.5 Forward looking information**

- (a) Bidder and each Guarantor acknowledges that Target RE, any other member of the Target Group and their respective Representatives make no representation or warranty in respect of any information provided to Bidder, each Guarantor or any of their respective Representatives in respect of any future matter (**Forward Looking Information**). Without limiting this clause 14.5 and for the avoidance of doubt, neither the Target RE, any other member of the Target Group nor any of their respective Representatives make any representation or warranty as to the reasonableness, accuracy, completeness or relevance of any assumptions underlying any Forward Looking Information.
- (b) Bidder and each Guarantor acknowledges that:
  - (i) Forward Looking Information is inherently uncertain and may prove to be incorrect;
  - (ii) they have not relied on any Forward Looking Information in determining whether or not to enter into this document with the Target RE; and
  - (iii) to the maximum extent permitted by law, Target RE, each other member of the Target Group and their respective Representatives will not be liable for any Loss suffered by Bidder, each Guarantor or any of their respective Representatives using or acting on any Forward Looking Information irrespective of whether the Loss arises in relation to, in connection with or as a result of, any negligence, default or lack of care on the part of Target RE, any other member of the Target Group or any of their respective Representatives.

#### **14.6 Benefit**

- (a) Target RE holds the benefit of the Target RE Representations and Warranties (and the indemnity given in respect of the Bidder Representations and Warranties pursuant to clause 14.4) on trust severally for each of the Target Indemnified Parties. Bidder acknowledges that each of the Target Indemnified Parties may bring an action directly against Bidder in respect of any breach of the Bidder Representations and Warranties.
- (b) Bidder holds the benefit of the Target RE Representations and Warranties (and the indemnity given in respect of the Target RE Representations and Warranties pursuant to clause 14.2) on trust for the Bidder Indemnified Parties. Target RE acknowledges that each of the Bidder Indemnified Parties may bring an action directly against Target RE in respect of any breach of the Target RE Representations and Warranties.
- (c) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by clause 14.2 or 14.4.

## **14.7 Reliance by parties**

Target RE and Bidder agrees and acknowledges that the other party is entering into this document in reliance on the representations and warranties given in this clause 14.

## **14.8 Notification**

Target RE and Bidder must promptly advise the other in writing if it becomes aware of any fact, matter or circumstances which constitutes or may constitute a breach of any representations and warranties given in this clause 14.

## **14.9 Status of representations and warranties**

Each representation and warranty in this clause 14:

- (a) is severable and separately enforceable;
- (b) will survive termination of this document; and
- (c) is given with the intent that liability under it will not be confined to breaches that are discovered prior to the date of termination of this document.

## **14.10 Survival of indemnities**

Each indemnity in clauses 14.2 and 14.4 will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligation of that party under this document; and
- (d) survive the termination of this document.

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# **15 Guarantors, CKA Shareholder Resolution and Consortium Shareholder Resolutions**

## **15.1 Background**

- (a) The parties acknowledge that:
  - (i) as at the date of this document, Bidder is a wholly-owned Subsidiary of CKA;
  - (ii) CKA intends to put the CKA Shareholder Resolution to its shareholders for approval;
  - (iii) CKA, CKHH, CKI and PAH intend to put the Consortium Shareholder Resolutions to their respective shareholders for approval;
  - (iv) if the Relevant Approvals with respect to CKI are obtained, it is intended that CKI or a Subsidiary of it will directly or indirectly subscribe for or otherwise acquire shares in Bidder; and

- (v) if the Relevant Approvals with respect to PAH are obtained, it is intended that PAH or a Subsidiary of it will directly or indirectly subscribe for or otherwise acquire shares in Bidder.
- (b) CKA agrees and acknowledges that it must convene and hold the CKA Shareholder Meeting at which both the CKA Shareholder Resolution and the Consortium Shareholder Resolutions (unless, in the case of the Consortium Shareholder Resolutions, the Condition Precedent in clause 3.1(d) has been waived) are put to its shareholders for approval at the CKA Shareholder Meeting.
- (c) For the avoidance of doubt, the rights and obligations of a party in this clause 15 are in addition to any other rights and obligations of a party elsewhere in this document.

## 15.2 Individual Guarantor representations and warranties

- (a) CKI represents and warrants to Target RE and each Target Indemnified Party that on each date from the date of this document until (and including) 8.00am on the Second Judicial Advice Date that:
  - (i) CKI has been incorporated or formed in accordance with the laws of its place of incorporation;
  - (ii) CKI has full legal capacity and power to enter into this document and to carry out the transactions that this document contemplates;
  - (iii) CKI holds each authorisation that is necessary for it to:
    - (A) execute this document and to carry out the transactions that this document contemplates; and
    - (B) ensure that this document is legal, valid, binding and admissible in evidence;
  - (iv) this document constitutes legal, valid and binding obligations, enforceable against CKI in accordance with its terms, subject to any necessary stamping or registration, and laws generally affecting creditors' rights and principles of equity;
  - (v) CKI has taken all corporate action that is necessary or desirable to authorise its entry into this document and its carrying out of the transactions that this document contemplates;
  - (vi) CKI is authorised under the terms of its constituent documents to enter into and give effect to the terms and conditions of this document and to carry out the transactions contemplated by this document;
  - (vii) to the best of CKI's knowledge and belief, this document does not conflict with or result in the breach of or a default under any document, agreement or instrument to which CKI is party and which would prevent CKI from performing its obligations under the Transaction Documents;
  - (viii) to the best of CKI's knowledge and belief, the execution and performance by CKI of this document and each transaction contemplated by this document did not and will not violate in any respect:

- (A) any law to which it is subject or any order of any Government Agency that is binding on it;
  - (B) any ruling, court decree, undertaking or instrument binding on, or applicable to, CKI;
  - (C) any Encumbrance, instrument or document which is binding on CKI or any of its assets; or
  - (D) its constituent documents;
- (ix) none of CKI or any of its Related Bodies Corporate or Associates has any agreement, arrangement or understanding with any Target Securityholder under which that Target Securityholder (or an associate of that Target Securityholder) would be entitled to receive consideration for their Target Securities different from the Proposal Consideration or under which the Target Securityholder agrees to vote in favour of the Proposal or against any Competing Transaction;
  - (x) none of CKI or any of its Related Bodies Corporate or Associates has a Relevant Interest in Target Securities;
  - (xi) CKI is not Insolvent; and
  - (xii) by 8.00am on the Second Judicial Advice Date and on the Implementation Date, CKI will have sufficient cash reserves (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy CKI's obligations to pay its actual, or likely, Relevant Proportion of the Proposal Consideration in accordance with its obligations under this document and the other Transaction Documents.
- (b) CKA represents and warrants to Target RE and each Target Indemnified Party that on each date from the date of this document until (and including) 8.00am on the Second Judicial Advice Date that:
- (i) CKA has been incorporated or formed in accordance with the laws of its place of incorporation;
  - (ii) as at the date of this document, Bidder is a wholly-owned Subsidiary of CKA;
  - (iii) CKA has full legal capacity and power to enter into this document and to carry out the transactions that this document contemplates;
  - (iv) CKA holds each authorisation that is necessary for it to:
    - (A) execute this document and to carry out the transactions that this document contemplates; and
    - (B) ensure that this document is legal, valid, binding and admissible in evidence;
  - (v) this document constitutes legal, valid and binding obligations, enforceable against CKA in accordance with its terms, subject to any necessary stamping or registration, and laws generally affecting creditors' rights and principles of equity;

- (vi) CKA has taken all corporate action that is necessary or desirable to authorise its entry into this document and its carrying out of the transactions that this document contemplates;
  - (vii) CKA is authorised under the terms of its constituent documents to enter into and give effect to the terms and conditions of this document and to carry out the transactions contemplated by this document;
  - (viii) to the best of CKA's knowledge and belief, this document does not conflict with or result in the breach of or a default under any document, agreement or instrument to which CKA is party and which would prevent CKA from performing its obligations under the Transaction Documents;
  - (ix) to the best of CKA's knowledge and belief, the execution and performance by CKA of this document and each transaction contemplated by this document did not and will not violate in any respect:
    - (A) any law to which it is subject or any order of any Government Agency that is binding on it;
    - (B) any ruling, court decree, undertaking or instrument binding on, or applicable to, CKA;
    - (C) any Encumbrance, instrument or document which is binding on CKA or any of its assets; or
    - (D) its constituent documents;
  - (x) none of CKA or any of its Related Bodies Corporate or Associates has any agreement, arrangement or understanding with any Target Securityholder under which that Target Securityholder (or an associate of that Target Securityholder) would be entitled to receive consideration for their Target Securities different from the Proposal Consideration or under which the Target Securityholder agrees to vote in favour of the Proposal or against any Competing Transaction;
  - (xi) none of CKA or any of its Related Bodies Corporate or Associates has a Relevant Interest in Target Securities;
  - (xii) CKA is not Insolvent; and
  - (xiii) by 8.00am on the Second Judicial Advice Date and on the Implementation Date, CKA will have sufficient cash reserves (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy CKA's obligations to pay its Relevant Proportion of the Proposal Consideration in accordance with its obligations under this document and the other Transaction Documents.
- (c) PAH represents and warrants to Target RE and each Target Indemnified Party that on each date from the date of this document until (and including) 8.00am on the Second Judicial Advice Date that:
- (i) PAH has been incorporated or formed in accordance with the laws of its place of incorporation;



- (ii) PAH has full legal capacity and power to enter into this document and to carry out the transactions that this document contemplates;
- (iii) PAH holds each authorisation that is necessary for it to:
  - (A) execute this document and to carry out the transactions that this document contemplates; and
  - (B) ensure that this document is legal, valid, binding and admissible in evidence;
- (iv) this document constitutes legal, valid and binding obligations, enforceable against PAH in accordance with its terms, subject to any necessary stamping or registration, and laws generally affecting creditors' rights and principles of equity;
- (v) PAH has taken all corporate action that is necessary or desirable to authorise its entry into this document and its carrying out of the transactions that this document contemplates;
- (vi) PAH is authorised under the terms of its constituent documents to enter into and give effect to the terms and conditions of this document and to carry out the transactions contemplated by this document;
- (vii) to the best of PAH's knowledge and belief, this document does not conflict with or result in the breach of or a default under any document, agreement or instrument to which PAH is party and which would prevent PAH from performing its obligations under the Transaction Documents;
- (viii) to the best of PAH's knowledge and belief, the execution and performance by PAH of this document and each transaction contemplated by this document did not and will not violate in any respect:
  - (A) any law to which it is subject or any order of any Government Agency that is binding on it;
  - (B) any ruling, court decree, undertaking or instrument binding on, or applicable to, PAH;
  - (C) any Encumbrance, instrument or document which is binding on PAH or any of its assets; or
  - (D) its constituent documents;
- (ix) none of PAH or any of its Related Bodies Corporate or Associates has any agreement, arrangement or understanding with any Target Securityholder under which that Target Securityholder (or an associate of that Target Securityholder) would be entitled to receive consideration for their Target Securities different from the Proposal Consideration or under which the Target Securityholder agrees to vote in favour of the Proposal or against any Competing Transaction;
- (x) none of PAH or any of its Related Bodies Corporate or Associates has a Relevant Interest in Target Securities;
- (xi) PAH is not Insolvent; and

- (xii) by 8.00am on the Second Judicial Advice Date and on the Implementation Date, PAH will have sufficient cash reserves (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy PAH's obligations to pay its actual, or likely, Relevant Proportion of the Proposal Consideration in accordance with its obligations under this document and the other Transaction Documents.
- (d) Each Guarantor acknowledges that:
  - (i) in entering into this document Target RE has relied on the representations and warranties provided by that Guarantor in this clause 15.2; and
  - (ii) it has not entered into this document in reliance on any warranty or representation made by or on behalf of the other parties except those warranties and representations set out in this document.
- (e) Each Guarantor must promptly advise Target RE in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of any of the representations or warranties given by it in this clause 15.2.
- (f) Each representation and warranty in this clause 15.2:
  - (i) is severable;
  - (ii) will survive the termination of this document; and
  - (iii) is given with the intent that liability under it will not be confined to breaches that are discovered prior to the date of termination of this document.

### 15.3 Guarantee and indemnity

- (a) Subject to clause 15.3(h) and in consideration of Target RE executing this document at the request of Bidder and the Guarantors, each Guarantor:
  - (i) unconditionally and irrevocably guarantees to Target RE the due and punctual performance and observance by Bidder of all obligations contained in, or implied under, this document that must be performed and observed by Bidder (the **Guaranteed Obligations**); and
  - (ii) as a separate and additional liability, indemnifies Target RE and the Target Indemnified Parties against all Losses of any nature that Target RE or any Target Indemnified Party may now or in the future suffer or incur consequent on, or arising from, any default or delay in the due and punctual performance, or non-performance, by Bidder of a Guaranteed Obligation.
- (b) The liability of each Guarantor under this clause 15.3 is not affected by anything that, but for this clause 15.3, might operate to release or exonerate the Guarantor in whole or in part from its obligations including any of the following, whether with or without the consent of the Guarantor:

- (i) an amendment of this document (other than to the terms of this clause 15.3);
- (ii) a rule of law or equity on the contrary;
- (iii) any of the following occurring with respect to a person:
  - (A) the person is or becomes unable to pay its debts as and when they fall due or is otherwise presumed to be insolvent under the insolvency laws applying to that person;
  - (B) the person suspends or threatens to suspend payment of its debts generally;
  - (C) the calling of a meeting to consider a resolution to wind up the person or the making of an application or the making of any order, or the passing of any resolution, for the winding up, liquidation or bankruptcy of the person;
  - (D) the appointment of a provisional liquidator, liquidator, receiver or a receiver and manager or other insolvency official to the person or to the whole or a substantial part of the property or assets of the person;
  - (E) the appointment of an administrator to the person; or
  - (F) the entry by a person into any compromise or arrangement with creditors;
- (iv) a change in the constitution, membership, or partnership of a person;
- (v) the partial performance of the Guaranteed Obligations;
- (vi) the Guaranteed Obligations not being enforceable at any time;
- (vii) the grant to Bidder, a Guarantor or any other person at any time, waiver or other indulgence, or the discharge or release of Bidder, a Guarantor or any other person from any liability or obligation (other than an obligation under this clause 15.3);
- (viii) any transaction or arrangement that may take place between Target RE, Bidder, a Guarantor or any other person;
- (ix) Target RE exercising or refraining from exercising its rights under any security or any other rights, powers or remedies against Bidder, a Guarantor or any other person;
- (x) the amendment, replacement, extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer either in whole or in part and either with or without consideration, of any security now or in the future held by Target RE from Bidder, a Guarantor or any other person or by the taking of or failure to take any security;
- (xi) the failure or omission or any delay by Target RE or Bidder to give notice to a Guarantor of any default by Bidder or any other person under this document; and

- (xii) any legal limitation, disability, incapacity or other circumstances related to a person.
- (c) This clause 15.3:
- (i) is a principal obligation and is not to be treated as ancillary or collateral to another right or obligation and extends to cover this document as amended, varied, supplemented, renewed or replaced; and
  - (ii) is independent of, and not in substitution for or affected by, another security interest or guarantee or other document or agreement which Target RE or another person may hold concerning the Guaranteed Obligations.
- (d) Each Guarantor must make all payments required of them under this clause 15.3 in full, without set off and free any withholding or deduction. If a Guarantor is required to withhold or deduct any tax, duty, impost, charge, withholding, rate, levies or other governmental imposition of any nature together with associated costs, charges, interest, penalties, fines or expenses so that Target RE would not actually receive on the due date the full amount, the Guarantor must ensure that the amount payable is increased so that, after making that deduction and deductions applicable to additional amounts payable under this clause 15.3, Target RE is entitled to receive and does receive, the amount it would have received if no deductions had been required. Each Guarantor must ensure that any deductions required are made and pay the full amount deducted to the relevant Government Agency in accordance with applicable law.
- (e) A Guarantor has no right to set off, deduct or withhold any moneys that it may be or become liable to pay under this clause 15.3, against any moneys that Target RE or any other member of the Target Group may be or become liable to pay to Bidder or a Guarantor or any of their respective Related Bodies Corporate whether under this document or otherwise.
- (f) Target RE may enforce this clause 15.3 against each Guarantor without first having to resort to another guarantee or security interest or other agreement relating to the Guaranteed Obligations.
- (g) Each Guarantor's obligations under this clause 15.3 are absolute, unconditional and irrevocable. The liability of each Guarantor under this clause 15.3 extends to, and is not affected by, any circumstance, act or omission which, but for this clause 15.3, might otherwise affect it at law or in equity. The guarantee in this clause 15.3 is a continuing security, and remains in full force until all of the Guaranteed Obligations have been fully paid and satisfied. This clause 15.3 survives any termination or full or partial discharge of this document.
- (h) Each Guarantor's liability under this clause 15.3 is several and is equal to its relevant proportion at any given time (being as set out in the second column of the table below) ("**Relevant Proportion**") for all obligations and liabilities of the Guarantors under this this clause 15.3.

<b>Guarantor</b>	<b>Guarantor's Relevant Proportion</b>
CKA	<b>CKA's</b> Relevant Proportion is 100% less CKI's Relevant Proportion less PAH's Relevant Proportion.
CKI	<b>CKI's</b> Relevant Proportion is:

<b>Guarantor</b>	<b>Guarantor's Relevant Proportion</b>
	<ul style="list-style-type: none"> <li>• if the Relevant Approvals with respect to CKI are obtained – such percentage as notified by CKI in writing to Target RE; or</li> <li>• 0%.</li> </ul>
PAH	<p><b>PAH's</b> Relevant Proportion is</p> <ul style="list-style-type: none"> <li>• if the Relevant Approvals with respect to PAH are obtained – such percentage as notified by PAH in writing to Target RE; or</li> <li>• 0%.</li> </ul>

#### **15.4 Reasonable endeavours**

Notwithstanding clause 15.3 or any other provision of this document, but subject to clause 15.5, if a Guarantor uses its reasonable endeavours to procure that Bidder complies with its obligations under this document, including by exercising any rights available to it under the Consortium Arrangements (if the Consortium Arrangements are entered into), and:

- (a) after the Proposal becomes Effective, the Guarantor irrevocably and unconditionally provides Bidder with its Relevant Proportion of the funding necessary for Bidder to provide the Proposal Consideration to Proposal Participants;
- (b) if the Proposal does not become Effective, and:
  - (i) any amount is payable to Target RE under clause 13.2; or
  - (ii) it is finally judicially determined that Bidder is liable to pay any amount as a result of a breach of this document,

the Guarantor irrevocably and unconditionally provides to Bidder an amount that is equal to its Relevant Proportion of that amount payable to Target RE under clause 13.2 or Bidder's liability; or

- (c) if clause 15.4(b) does not apply and this document is terminated other than in accordance with clause 16.1(d) as a result of a material breach by Bidder,

then that Guarantor will have no further liability under this document (other than in accordance with clause 15.5 if relevant).

#### **15.5 Retention**

The Guarantors and Bidder agree that they will take all steps necessary to ensure that if any Guarantor:

- (a) contributes its Relevant Proportion of the funding necessary for Bidder to provide the Proposal Consideration to the Proposal Participants after the Proposal becomes Effective; or
- (b) contributes its Relevant Proportion of any amount necessary to meet any liability contemplated by clause 15.4(b),

then the amount contributed will be retained by Bidder until such time as Bidder has discharged in full the relevant obligation in connection with which the contribution was made. This obligation is independent of any other obligation under this clause 15. Each Guarantor's liability under this clause 15.5 is several

and is equal to its Relevant Proportion of any obligation or liability (as calculated in accordance with clause 15.3(h)).

## 15.6 CKA Shareholder Resolution – CKA board recommendation and intentions, and voting undertaking

- (a) CKA must procure that:
- (i) the CKA board of directors (**CKA Board**) states in the shareholder circular to be sent by CKA to its shareholders in connection with the CKA Shareholder Meeting that the CKA Board unanimously recommends that CKA shareholders approve the CKA Shareholder Resolution;
  - (ii) the CKA Board collectively, and each CKA director individually, does not change or withdraw that recommendation; and
  - (iii) no CKA director makes any public statement or any statement to brokers, analysts, journalists, CKA shareholders or professional or institutional investors to the effect, or take any action that suggests, that the CKA Shareholder Resolution is no longer so recommended,

unless, in relation to matters occurring after the date of this document, the CKA Board determines in good faith and acting reasonably, having received advice in writing from its legal advisers, that it should not recommend or continue to recommend that CKA shareholders approve the CKA Shareholder Resolution because of any fiduciary or statutory duties to CKA shareholders, provided that:

- (iv) CKA has first made reasonable endeavours to consult with Target RE as to the matters which would cause the CKA Board to make such a determination; and
  - (v) the status of any Condition Precedent or any Regulatory Approval is not a matter that entitles the CKA Board to not recommend or not to continue to recommend that CKA shareholders approve the CKA Shareholder Resolution.
- (b) CKA must use its reasonable endeavours to ensure that each CKA director:
- (i) has a statement attributed to him or her in the shareholder circular to be sent by CKA to its shareholders in connection with the CKA Shareholder Meeting that he or she intends to vote any of their personal interests in CKA shares in favour of the CKA Shareholder Resolution; and
  - (ii) does not change that voting intention,

unless at least a majority of the CKA Board ceases to recommend the CKA Shareholder Resolution pursuant to clause 15.6(a).

- (c) CKA must procure that, not later than 5 Business Days after the CKA Shareholder Materials have been despatched to CKA shareholders, the Trustees provide to Target RE the Voting Undertaking.
- (d) CKA agrees that any announcement made by Target RE in connection with the Proposal may, and any announcement by Bidder or a Guarantor (or any of their respective Related Bodies Corporate) immediately following the signing of this document must, contain a statement that

CKA will procure that the Trustees provide, or (if applicable) have provided, to Target RE the Voting Undertaking.

## **15.7 Preparation of CKA Shareholder Materials**

CKA must procure that:

- (a) as soon as reasonably practicable after the date of this document, but subject to clause 15.8, submit the draft shareholder circular to CKA shareholders to HKEx for its approval;
- (b) as soon as reasonably practicable after the approval referred to in paragraph (a) above is received, despatch to CKA's shareholders the CKA Shareholder Materials;
- (c) all necessary steps are taken to ensure that the CKA Shareholder Materials comply with the requirements of the HKEx Listing Rules and any other applicable law; and
- (d) the CKA Shareholder Meeting is held at the time specified in the CKA Shareholder Materials at which the CKA Shareholder Resolution and the Consortium Shareholder Resolutions are put to the CKA shareholders.

## **15.8 CKA Shareholder Materials and Other Guarantor Shareholder Materials - Assistance from Target RE**

- (a) Target RE acknowledges that CKA must prepare and send to its shareholders the CKA Shareholder Materials, and that each of CKHH, CKI and PAH intend to prepare and send to their respective shareholders the Other Shareholder Materials, which in each case may include financial and other information in relation to the Target Group. CKA will require, and CKHH, CKI and PAH may require, assistance from the Target Group to prepare the required information relating to the Target Group. Accordingly, Target RE agrees to provide, or procure the provision of, to each Guarantor and CKHH such information and assistance as may be reasonably requested by the Guarantor or CKHH in relation to the preparation of the CKA Shareholder Materials or Other Shareholder Materials, provided that:
  - (i) no Target Indemnified Party assumes any liability for any information and assistance provided (and Bidder indemnifies the Target Indemnified Parties against all Losses incurred directly or indirectly as a result of any information and assistance provided to each Guarantor and CKHH), except:
    - (A) to the extent there has been bad faith or wilful misconduct on the part of the relevant Target Indemnified Party; or
    - (B) as required by law; and
  - (ii) Target RE acknowledges that information will be reasonably requested if required to be included in the CKA Shareholder Materials or Other Shareholder Materials in accordance with the HKEx Listing Rules.
- (b) CKI receives and holds the benefit of this clause 15.8 to the extent it relates to CKHH on behalf of CKHH.

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## 16 Termination

### 16.1 Termination events

This document may be terminated:

- (a) **(End Date)** by either Bidder or Target RE, if the Proposal has not become Effective on or before the End Date;
- (b) **(lack of support – Bidder right)** by Bidder at any time prior to 8.00am on the Second Judicial Advice Date if at least a majority of the Target RE Directors:
  - (i) fail to recommend to the Target Securityholders that they vote in favour of the Proposal or the Proposal Resolutions;
  - (ii) publicly change (including by attaching qualifications to (other than those set out in clause 8.1(a) and clause 8.1(b))) or withdraw their statement that they consider the Proposal to be in the best interests of Target Securityholders or publicly change or withdraw their recommendation that Target Securityholders approve the Proposal or the Proposal Resolutions; or
  - (iii) publicly recommend, promote or otherwise endorse a Competing Transaction;
- (c) **(lack of support – Target RE right)** by Target RE at any time prior to 8.00am on the Second Judicial Advice Date if at least a majority of the Target RE Board:
  - (i) fails to recommend to the Target Securityholders that they vote in favour of the Proposal or the Proposal Resolutions;
  - (ii) publicly changes (including by attaching qualifications to (other than those set out in clause 8.1(a) and clause 8.1(b))) or withdraws their statements that they consider the Proposal to be in the best interests of Target Securityholders or publicly changes or withdraws their recommendation that Target Securityholders approve the Proposal or the Proposal Resolutions; or
  - (iii) publicly recommends, promotes or otherwise endorses a Superior Proposal,in accordance with clauses 8.1 and 11;
- (d) **(material breach)** by either Bidder or Target RE at any time prior to 8.00am on the Second Judicial Advice Date if:
  - (i) the other party is in breach of a term of this document (including any representation and warranty not being true and correct);
  - (ii) that breach is material in the context of the Proposal as a whole;
  - (iii) the terminating party has, if practicable, given notice to the other party setting out the relevant circumstances of that other party's breach; and
  - (iv) the relevant circumstances continue to exist 5 Business Days (or any shorter period ending at 7.00am on the Second Judicial Advice Date) after the time such notice is given;



- (e) **(consultation or appeal failure)** by the relevant party, in accordance with and pursuant to:
  - (i) clause 3.7(a)(i);
  - (ii) clause 3.7(a)(ii); or
  - (iii) clause 7.7; or
- (f) **(agreement)** if agreed to in writing by Bidder and Target RE.

## 16.2 Termination

Where Target RE or Bidder has a right to terminate this document, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this document.

## 16.3 Effect of Termination

If this document is terminated by either Bidder or Target RE, or if this document otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this document, other than the obligations set out in this clause and in clauses 1.1, 1.2, 1.3, 1.5, 3.7(c), 7.7, 12, 13, 14, 15.2, 15.3, 15.4, 15.5, 15.8, 16.3, 16.4, 17 to 25 (inclusive) will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause releases any party from liability for any pre-termination breach of this document.

## 16.4 Damages

In addition to the right of termination under clause 16.1 where there is no appropriate remedy for the breach in this document (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this document.

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# 17 Public announcements

## 17.1 Public announcement of Proposal

Immediately after signing this document, Target RE and each Guarantor must issue public announcements of the proposed Proposal in the forms agreed between the parties.

## 17.2 Required disclosure

- (a) Where a party is required by any applicable law, Listing Rule or HKEx Listing Rules to make any announcement or make any disclosure in connection with the Proposal, it must use all reasonable endeavours, to the extent possible, to consult with the other party prior to making the relevant disclosure.
- (b) Nothing in this document, including this clause 17.2 and clause 17.3:
  - (i) prevents, limits or restricts in any way the Target, Target RE or Target RE Board making, and the form and content of, any announcement in relation to a Competing Transaction; or

- (ii) requires a party to do anything if doing so would lead to a party breaching an applicable law, the Listing Rules or HKEx Listing Rules.

### **17.3 Other announcements**

Subject to clauses 17.1 and 17.2, no party may make any public announcement or disclosure in connection with the Proposal other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.

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## **18 Withholding tax**

### **18.1 Withholding**

If Bidder or (in the case of any payment by a Guarantor) any Guarantor is required by Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (**Subdivision 14-D**) to pay amounts to the ATO in respect of the acquisition of Target Securities from certain Proposal Participants, Bidder (or any Guarantor in respect of any payment by a Guarantor) is permitted to deduct the relevant amounts from the payment of the Proposal Consideration to those Proposal Participants, and remit such amounts to the ATO. The aggregate sum payable to Proposal Participants shall not be increased to reflect the deduction and the net aggregate sum payable to those Proposal Participants shall be taken to be in full and final satisfaction of the amounts owing to those Proposal Participants.

### **18.2 Clarification**

Target RE agrees that Bidder must approach the ATO to obtain clarification as to the application of Subdivision 14-D to the Proposal, with the intention of ensuring (to the maximum extent possible) that Bidder only withholds amounts under clause 18.1 from those persons who are, or are reasonably suspected to be, 10% Holders. Target RE must provide all information and assistance that Bidder reasonably requires in making that approach. Bidder agrees:

- (a) to provide Target RE a reasonable opportunity to review the form and content of all materials to be provided to the ATO, and to take into account Target RE comments on those documents and more generally in relation to Bidder's engagement with the ATO; and
- (b) not to contact any Target Securityholder in connection with the application of Subdivision 14-D to the Proposal without Target RE's prior written consent.

### **18.3 Consultation**

The parties agree to consult in good faith as to the application of Subdivision 14-D, with the intention of ensuring (to the maximum extent possible) that Bidder only withholds amounts under clause 18.1 from those persons who are, or are reasonably suspected to be, 10% Holders, including taking into account any clarification provided by the ATO following the process mentioned in clause 18.2. The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable to achieve this intention following consultation with the ATO which may include, without limitation, making amendments to the Transaction Documents to ensure that relevant representations are obtained from Proposal Participants.

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## **19 Capacity and limitation of Target RE liability**

### **19.1 Capacity**

Target RE enters into this document in its capacity as responsible entity of the Target and in no other capacity. Each of the parties to this document acknowledges that the obligations, and any representations and warranties, of Target RE under this document are incurred or given by Target RE to the parties in its capacity as responsible entity of the Target.

### **19.2 Limitation of Target RE liability**

- (a) A liability arising under or in connection with this document or the Proposal is limited to and can be enforced against Target RE only to the extent to which it can be satisfied out of the property of the Target out of which Target RE is actually indemnified as responsible entity. This limitation of Target RE's liability applies despite any other provision of this document and extends to all liabilities and obligations of Target RE in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document or the Proposal.
- (b) Bidder, any Guarantor and each of their Related Bodies Corporate may not sue Target RE in any capacity other than as responsible entity of the Target, including to seek the appointment of a receiver (except in relation to the property of the Target), a liquidator, an administrator or any similar person, to Target RE or prove in any liquidation, administration or arrangement of or affecting Target RE (except in relation to property of the Target).

### **19.3 Qualifications to limit**

The limitations in clauses 19.1 and 19.2 do not apply to any obligation or liability of Target RE to the extent it is not satisfied because under the Constitutions of the Target or by operation of law there is a reduction in the extent of Target RE's indemnification or Target RE has no right to indemnification out of the assets of the Target as a result of any fraud, breach of trust or breach of duty by Target RE relating to this document in its capacity as responsible entity of the Target. For the avoidance of doubt, in the event that any of the circumstances in the previous sentence arises, Target RE will be liable both in its personal capacity and in its capacity as responsible entity of the Target.

### **19.4 Right to indemnity out of assets of the Target**

This clause 19 is not intended to limit any rights which Target RE has to be indemnified out of the assets of the Target.

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## **20 Confidential Information**

Each party acknowledges and agrees that it continues to be bound by the applicable Confidentiality Agreement in respect of all information received by it from the other party on, before or after the date of this document.

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## **21 Notices and other communications**

### **21.1 Form**

Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in

connection with this document must be in writing and signed by the sender (if an individual) or an Authorised Officer of the sender.

All communications (other than email communications) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

## 21.2 Delivery

Communications must be:

- (a) left at the address referred to in the Details or, in the case of Bidder or any Guarantor, left at the offices of Allens (attention: Richard Kriedemann and Wendy Rae) at:

Level 28, Deutsche Bank Place  
126 Phillip Street  
Sydney NSW 2000  
AUSTRALIA;

- (b) sent by regular ordinary post (airmail if appropriate) to the address referred to in the Details; or
- (c) sent by email to the address referred to in the Details.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

Where a document is delivered under clause 21.2(a) or clause 21.2(b), a copy will be emailed to the address in the Details for information, but delivery will be sufficient for the purposes of this clause 21.2 as a result of delivery under clause 21.2(a) or clause 21.2(b) (as applicable).

## 21.3 When effective

Communications take effect from the time they are received or taken to be received under clause 21.4 (whichever happens first) unless a later time is specified in the communication.

## 21.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another);
- (b) if sent by email:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) 30 minutes after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

## 21.5 Receipt outside business hours

Despite anything else in this clause 21, if communications are received or taken to be received under clause 21.4 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

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## 22 GST

### 22.1 Definitions and interpretation

For the purposes of this clause:

- (a) **"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) a term which has a defined meaning in the GST Act has the same meaning when used in this clause, unless the contrary intention appears; and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

### 22.2 GST exclusive

Unless this document expressly states otherwise, all consideration to be provided under this document is exclusive of GST.

### 22.3 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply in connection with this document, the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply ("**GST Amount**").
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

### 22.4 Adjustment events

If an adjustment event arises for a supply made in connection with this document, the GST Amount must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

### 22.5 Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax

credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 22.3 will apply to the reduced payment.

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## **23 Costs**

### **23.1 Costs**

The parties agree to pay their own Costs in connection with the preparation, negotiation, execution and completion of this document, except for amounts covered by clause 23.2.

### **23.2 Stamp duty and registration fees**

Bidder:

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of those amounts); and
- (b) indemnifies Target RE and any member of the Target Group against, and agrees to reimburse and compensate it for, any liability in respect of stamp duty under clause 23.2(a).

Bidder agrees to pay amounts due to Target RE or any member of the Target Group under this clause 23.2 within 5 Business Days of demand from Target RE or any member of the Target Group.

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## **24 General**

### **24.1 Variation and waiver**

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

### **24.2 Consents, approvals or waivers**

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

### **24.3 Discretion in exercising rights**

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

### **24.4 Partial exercising of rights**

Unless this document expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this document fully or at a given time, they may still exercise it later.

#### **24.5 Conflict of interest**

Each party may exercise their rights, powers and remedies in connection with this document even if this involves a conflict of duty or they have a personal interest in their exercise.

#### **24.6 Remedies cumulative**

Subject to clause 12.6, the rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

#### **24.7 Indemnities and reimbursement obligations**

Any indemnity, reimbursement or similar obligation in this document:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing;
- (b) is independent of any other obligations under this document; and
- (c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

#### **24.8 Inconsistent law**

To the extent the law permits, this document prevails to the extent it is inconsistent with any law.

#### **24.9 Counterparts**

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

#### **24.10 Further steps**

Each party agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed), which the other party asks and considers necessary to:

- (a) bind the party and any other person intended to be bound under this document; or
- (b) show whether the party is complying with this document.

#### **24.11 No liability for loss**

Unless this document expressly states otherwise, a party is not liable for any loss, liability or costs arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this document.

#### **24.12 Severability**

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this

document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this document or is contrary to public policy.

#### **24.13 Rules of construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this document or any part of it.

#### **24.14 No merger**

The warranties, undertaking and indemnities in this document do not merge on the Implementation Date.

#### **24.15 Assignment**

A party may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of the other party.

#### **24.16 Enforceability**

For the purpose of this document:

- (a) Target RE is taken to be acting as agent and trustee on behalf of and for the benefit of all Target Indemnified Parties, and Target RE may enforce an indemnity in this document for the benefit of the Target Indemnified Parties; and
- (b) Bidder is taken to be acting as agent and trustee on behalf of and for the benefit of all Bidder Indemnified Parties, and Bidder may enforce an indemnity in this document for the benefit of the Bidder Indemnified Parties,

and all of those persons are to this extent taken to be parties to this document.

#### **24.17 No representation or reliance**

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document;
- (b) it does not enter into this document in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this document; and
- (c) clauses 24.17(a) and 24.17(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.



---

## **25 Governing law**

### **25.1 Governing law and jurisdiction**

The law in force in the place specified in the Details governs this document. The parties submit to the exclusive jurisdiction of the courts of that place.

### **25.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address for service of notices under clause 21.2 or with its process agent.

### **25.3 Appointment of process agent**

Without preventing any method of service allowed under any relevant law, Bidder and each Guarantor:

- (a) irrevocably appoints Allens (to the attention of Wendy Rae) as its process agent to receive any document in an action in connection with this document; and
- (b) agrees that failure by a process agent to notify Bidder of any document in an action in connection with this document does not invalidate the action concerned.

If for any reason Allens ceases to be able to act as process agent, Bidder agrees to appoint another person as its process agent in the place referred to in clause 25.1 and ensure that the replacement process agent accepts its appointment and confirms its appointment to Bidder.

Allens accepts its appointment as the process agent.

Bidder and each Guarantor agrees that service of documents on its process agent is sufficient service on it.

**EXECUTED** as an agreement

## Schedule 1 Timetable (clause 5.1)

<b>Event</b>	<b>Indicative Date</b>
Lodge draft Explanatory Memorandum with ASIC and ASX	27 September 2018
First Judicial Advice Date	15 October 2018
Despatch of Explanatory Memorandum	22 October 2018
Meeting Date	28 November 2018
Second Judicial Advice Date	3 December 2018
Effective Date (the day the Supplemental Deeds Poll take effect pursuant to section 601GC(2) of the Corporations Act)	4 December 2018
Record Date (5.00pm on the date which is 4 Business Days after the Effective Date)	10 December 2018
Implementation Date (5 Business Days following the Record Date)	17 December 2018

# Signing page

DATED: 12 AUGUST 2018 [NOTE: SIGNED PAGES OMITTED]

## Target

**EXECUTED by AUSTRALIAN  
PIPELINE LIMITED (ABN 99 091 344  
704) IN ITS CAPACITY AS  
RESPONSIBLE ENTITY OF  
AUSTRALIAN PIPELINE TRUST  
(ARSN 091 678 778) in accordance  
with section 127(1) of the *Corporations  
Act 2001* (Cth) by authority of its  
directors:**

.....  
Signature of director

.....  
Name of director (block letters)

.....  
Signature of director/company  
secretary\*  
\*delete whichever is not applicable

.....  
Name of director/company secretary\*  
(block letters)  
\*delete whichever is not applicable

**EXECUTED by AUSTRALIAN  
PIPELINE LIMITED (ABN 99 091 344  
704) IN ITS CAPACITY AS  
RESPONSIBLE ENTITY OF APT  
INVESTMENT TRUST (ARSN 115 585  
441) in accordance with section 127(1)  
of the *Corporations Act 2001* (Cth) by  
authority of its directors:**

.....  
Signature of director

.....  
Name of director (block letters)

.....  
Signature of director/company  
secretary\*  
\*delete whichever is not applicable

.....  
Name of director/company secretary\*  
(block letters)  
\*delete whichever is not applicable

**Bidder**

**EXECUTED** by **CKM AUSTRALIA** )  
**BIDCO PTY LTD (ACN 627 690 608)** )  
in accordance with section 127(1) of )  
the *Corporations Act 2001* (Cth) by )  
authority of its directors: )

..... )  
Signature of director )

..... )  
Name of director (block letters) )

..... )  
Signature of director/company )  
secretary\* )  
\*delete whichever is not applicable )

..... )  
Name of director/company secretary\* )  
(block letters) )  
\*delete whichever is not applicable )

**Guarantors**

**Executed** by directors of  
**CK INFRASTRUCTURE HOLDINGS  
LIMITED:**

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

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

\_\_\_\_\_  
Print Name of director

\_\_\_\_\_  
Print name of director

**Executed** by directors of  
**CK ASSET HOLDINGS LIMITED:**

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

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

\_\_\_\_\_  
Print Name of director

\_\_\_\_\_  
Print name of director

**Executed** by directors of  
**POWER ASSETS HOLDINGS LIMITED:**

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

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

\_\_\_\_\_  
Print Name of director

\_\_\_\_\_  
Print name of director

# Annexure A Supplemental Deed Poll – APT Constitution

# Australian Pipeline Trust Supplemental Deed

Dated

Australian Pipeline Limited (ACN 091 344 704) ("Trustee")

**King & Wood Mallesons**

Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
**T** +61 2 9296 2000  
**F** +61 2 9296 3999  
DX 113 Sydney  
[www.kwm.com](http://www.kwm.com)

60-3003-4570

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# Australian Pipeline Trust Supplemental Deed Contents

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# Australian Pipeline Trust Supplemental Deed Details

Party	Trustee	
<b>Trustee</b>	Name	<b>Australian Pipeline Limited</b>
	ACN	091 344 704
	Formed in	Australia
	Address	Level 25, 580 George Street SYDNEY NSW 2000
	Email	<a href="mailto:company.secretary@apa.com.au">company.secretary@apa.com.au</a>  (with a copy delivered by email to <a href="mailto:stephen.minns@au.kwm.com">stephen.minns@au.kwm.com</a> and <a href="mailto:will.heath@au.kwm.com">will.heath@au.kwm.com</a> )
	Attention	Nevenka Codevelle, General Counsel & Company Secretary
<b>Governing law</b>	New South Wales	
<b>Recitals</b>	<b>A</b>	The Trustee is the responsible entity of the trust known as the Australian Pipeline Trust (ARSN 091 678 778) ( <b>Trust</b> ).
	<b>B</b>	The Trust is registered as a managed investment scheme under Chapter 5C of the Corporations Act.
	<b>C</b>	The Trust was constituted under the Constitution.
	<b>D</b>	Section 601GC(1) of the Corporations Act provides that the constitution of a registered scheme may be modified, or repealed and replaced with a new constitution:  (a) by special resolution of the members of the scheme; or  (b) by the responsible entity if it reasonably considers the change will not adversely affect members' rights.
	<b>E</b>	Under clause 15 of the Constitution, the Trustee may, subject section 601GC of the Corporations Act, modify the Constitution by executing a deed.

- F The Holders have passed, for the purposes of section 601GC(1)(a), a special resolution approving the amendments to the Constitution set out in this supplemental deed poll.
- G The Trustee proposes to execute this supplemental deed poll to give effect to the approved amendments.

# Australian Pipeline Trust Supplemental Deed General terms

---

## 1 Interpretation

### 1.1 Definitions

In this deed, these words and phrases have the following meanings and any other words and phrases have the meaning given to them in the Constitution, unless the contrary intention appears:

**Constitution** means the document dated 18 February 2000 under which the Trust was constituted, as amended from time to time.

**Effective Time** means the date on and time at which a copy of this Supplemental Deed Poll is lodged with ASIC under section 601GC(2) of the Corporations Act.

### 1.2 Interpretation

Clause 1.2 of the Constitution applies to this deed as if set out in this deed, except that references to “this constitution” are references to this deed.

### 1.3 Deed supplemental to Constitution

This deed is supplemental to the Constitution.

---

## 2 Benefit of this deed

This deed is made by the Trustee with the intent that the benefit of this deed shall inure to the benefit of Holders, jointly and severally.

---

## 3 Modifications to the Constitution

The Constitution is modified on and from the Effective Time in the manner set out in Schedule 1.

---

## 4 No redeclaration

The Manager is not, by this deed:

- (a) redeclaring or resettling the Trust;
- (b) declaring any other trust; or
- (c) causing the transfer, vesting or accruing of property in any person.

---

## 5 Governing law

This deed is governed by the laws in force in the place specified in the Details. Each person affected by it must submit to the non-exclusive jurisdiction of the courts of that place and the courts of appeal from them.

**EXECUTED** as a deed

# Australian Pipeline Trust Supplemental Deed

## Schedule 1 Amendments to Australian Pipeline Trust Constitution

### **Amendment 1:**

The Constitution is amended by inserting a new sub-paragraph (6) in clause 1.6(b) as follows:

"(6) the divestment is under clause 24."

### **Amendment 2:**

The Constitution is amended by deleting "or" at the end of sub-paragraph (4) in clause 1.6(b).

### **Amendment 3:**

The Constitution is amended by inserting "or" at the end of sub-paragraph (5) in clause 1.6(b).

### **Amendment 4:**

The Constitution is amended by inserting a new clause 6.4(c) as follows:

"(c) the Proposal (as defined in clause 24.1) is a transaction for the purposes of clause 6.4(a). To the extent of any inconsistency between clause 6.4(a) and (b), and clause 24, clause 24 prevails."

### **Amendment 5:**

The Constitution is amended by inserting a new clause 24 as follows:

---

## **24 Proposal implementation**

### **24.1 Definitions**

In this clause 24, capitalised terms have the following meaning unless the contrary intention appears (and to the extent of any inconsistency with clause 1.1 these definitions prevail):

**APTIT** means the APT Investment Trust (ARSN 115 585 441).

**APTIT Security** means a unit in APTIT on issue.

**Bidder** means CKM Australia Bidco Pty Ltd (ACN 627 690 608).

**Deed Poll** means the deed poll executed by Bidder and the Guarantors in favour of the Proposal Participants.

**Business Day** means any day that is each of the following:

(a) a business day as defined in the Listing Rules;

- (b) a day that banks are open for business in Sydney, Australia;
- (c) a day that banks are open for business in Hong Kong; and
- (d) a day that banks are open for business in London, United Kingdom,

except that, for the purposes of the definitions of Record Date and Implementation Date, "Business Day" means only a business day as defined in the Listing Rules.

**CHES** means the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement Pty Limited (ABN 49 008 504 532).

**Effective** means when the supplemental deeds poll to implement the Proposal take effect pursuant to section 601GC(2) of the Corporations Act.

**Effective Date** means the date on which the Proposal becomes Effective.

**Guarantors** means:

- (a) CK Asset Holdings Limited of 7th Floor, Cheung Kong Center, 2 Queen's Road, Central, Hong Kong;
- (b) CK Infrastructure Holdings Limited of 12/F Cheung Kong Center, 2 Queen's Rd, Central, Hong Kong.

**Guidance Note 15** means the document titled "Guidance Note 15: Trust scheme mergers" issued by the Takeovers Panel.

**Implementation Agreement** means the Implementation Agreement between the Trustee in its capacity as responsible entity for the Trust, the Trustee in its capacity as responsible entity of APTIT, Bidder and the Guarantors in respect of the proposal and implementation of the Proposal.

**Implementation Date** means:

- (a) if the Record Date is 6 or more Business Days prior to 31 January 2019, the 5<sup>th</sup> Business Day following the Record Date;
- (b) in all other cases, the 12<sup>th</sup> Business Day following the Record Date; or
- (c) such other day as the Trustee and Bidder agree in writing.

**Proposal** means the arrangement, under which Bidder will acquire all of the Units (and all the APTIT Securities) from the Proposal Participants by way of inter-conditional trust schemes for the Trust and APTIT to be implemented in accordance with Guidance Note 15, Regulatory Guide 74 and facilitated by amendments to the constitutions of the Trust and of APTIT approved by Holders as well as resolutions pursuant to section 611 item 7 of the Corporations Act.

**Proposal Consideration** means the consideration payable by Bidder for the transfer of Target Securities held by a Proposal Participant to Bidder, being, in respect of each Target Security, a cash amount of A\$11.00.

**Proposal Participants** means each person who holds Target Securities as at the Record Date.

**Proposal Resolutions** means the resolutions which, in substance, are as follows:

- (a) an ordinary resolution to approve the Proposal for the purposes of item 7 of section 611 of the Corporations Act (including the acquisition of a Relevant Interest in all the Target Securities by Bidder; and
- (b) conditional on (a), a special resolution for the purposes of section 601GC(1) of the Corporations Act to approve amendments to the constitution of the Trust and the constitution of APTIT necessary to implement the Proposal.

**Record Date** means 5.00pm on the 4<sup>th</sup> Business Day following the Effective Date or such other date as the Trustee and Bidder agree in writing.

**Registered Address** means, in relation to a Proposal Participant, the address of that Proposal Participant shown on the Register as at the Record Date.

**Regulatory Guide 74** means ASIC's "Regulatory Guide 74 (Acquisitions agreed to by shareholders)".

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

**Scheme Meeting** means the meeting of Holders for the purpose of, inter alia, voting on the Proposal Resolutions.

**Target** means the Trust and APTIT.

**Target Securities** means the Target stapled securities, each comprising one Unit and one unit in APTIT, which are on issue as at the Record Date.

**Transfers** means, for each Proposal Participant, a proper instrument of transfer of their Units for the purpose of section 1071B of the Corporations Act (which may be a master transfer of all or part of all of the Units).

**Trust Account** means an Australian dollar denominated trust account operated by the Trustee (or by the Registrar on behalf of the Trustee) as trustee for Proposal Participants.

## 24.2 Implementation of the Proposal

- (a) Each Proposal Participant and the Trustee must do all things and execute all deeds, instruments, transfers or other documents as the Trustee considers are necessary or desirable to give full effect to the terms of the Proposal and the transactions contemplated by it.
- (b) Without limiting the Trustee's other powers under this clause 24.2, the Trustee has power to do all things that it considers necessary or desirable to give effect to the Proposal and the Implementation Agreement.
- (c) Subject to the Corporations Act, the Trustee, the Bidder, the Guarantors, and any of their respective directors, officers, employees or associates, may do any act, matter or thing described in or contemplated by this clause 24.2 even if they have an interest (financial or otherwise) in the outcome.
- (d) This clause 24.2:
  - (i) binds the Trustee and all of the Holders (including those who do not attend the Scheme Meeting, those who do not vote at the Scheme Meeting and those who vote against the Proposal Resolutions); and

- (ii) to the extent of any inconsistency, overrides the other provisions of this Constitution (but, for the avoidance of doubt, remains subject to the Corporations Act and the Listing Rules).

### **24.3 Entitlement to Proposal Consideration**

Each Proposal Participant will be entitled to receive the Proposal Consideration for the Target Securities held by that Proposal Participant.

### **24.4 Deposit of Proposal Consideration**

- (a) Bidder must, by no later than the Business Day before the Implementation Date:
  - (i) deposit (or procure the deposit) in cleared funds into the Trust Account an amount equal to the aggregate amount of the Proposal Consideration payable to all Proposal Participants less any amount remitted to the ATO by way of tax withholding in accordance with clause 18 of the Implementation Agreement;
  - (ii) remit to the ATO any tax withholding required to be remitted under clause 18 of the Implementation Agreement; and
  - (iii) provide written confirmation to the Trustee of the payments required under clause 24.4(a)(i) and 24.4(a)(ii).
- (b) The amount of any interest on the aggregate Proposal Consideration deposited under clause 24.4(a)(i) (less bank fees and other charges) will be to Bidder's account.

### **24.5 Payment to Proposal Participants**

- (a) On the Implementation Date, subject to Bidder having satisfied its obligations in clause 24.4, the Trustee must pay or procure the payment to each Proposal Participant, from the Trust Account, of the Proposal Consideration that the Proposal Participant is entitled to under clause 24.3, less any amount remitted to the ATO by way of tax withholding in accordance with clause 18 of the Implementation Agreement.
- (b) The obligations of the Trustee under clause 24.5(a) will be satisfied by the Trustee (in its absolute discretion):
  - (i) where a Proposal Participant has, before the Record Date, complied with the requirements of the Registrar for nominating a bank account to receive distribution payments that is denominated in Australian currency, paying, or procuring the payment of, the relevant amount in Australian currency into that account by electronic means in accordance with that election; or
  - (ii) otherwise, whether or not the Proposal Participant has made an election referred to in paragraph (i), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Proposal Participant by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Proposal Participant (or in the case of joint Holders, in accordance with the procedures set out in clause 24.6).
- (c) If, following satisfaction of Bidder's obligations under clause 24.4, the Proposal lapses under clause 24.18:



- (i) the Trustee must immediately repay (or cause to be repaid) to or at the direction of Bidder the funds that were deposited in the Trust Account plus any interest on the amounts deposited (less bank fees and other charges);
- (ii) the obligation to transfer the Units, together with all rights and entitlements attaching to the Units as at the Implementation Date, to Bidder under clause 24.11 will immediately cease;
- (iii) Bidder must return the Transfers, if provided pursuant to clause 24.11; and
- (iv) the Trustee is no longer obliged to enter, or procure the entry of, the name of Bidder in the Register in accordance with clause 24.12.

## 24.6 Joint Holders

In the case of Target Securities held in joint names:

- (a) any cheque required to be sent under the Proposal will be made payable to the joint Holders and be sent to the holder whose name appears first in the Register as at the Record Date; and
- (b) any other document required to be sent under the Proposal, will be forwarded to either, at the sole discretion of the Trustee, the holder whose name appears first in the Register as at the Record Date or to the joint Holders.

## 24.7 Fractional entitlements

Where the calculation of the Proposal Consideration to be provided to a particular Proposal Participant or the amount to be remitted to the ATO would result in the Proposal Participant becoming entitled to a fraction of a cent or the obligation to remit to the ATO a fraction of a cent (as relevant), the fractional entitlement will be rounded down to the nearest cent.

## 24.8 Cancellation and re-issue of cheques

- (a) The Trustee may cancel a cheque issued under this clause 24 if the cheque:
  - (i) is returned to the Trustee or the Registrar; or
  - (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Proposal Participant to the Trustee or the Registrar) (which request may not be made until the date which is 20 Business Days after the Implementation Date), the Trustee must reissue a cheque that was previously cancelled under clause 24.8(a).

## 24.9 Unclaimed monies

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Proposal Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).

- (b) Any interest or other benefit accruing from unclaimed Proposal Consideration will be to the benefit of Bidder.

#### **24.10 Remaining monies (if any) in Trust Account**

To the extent that, following satisfaction of the Trustee's obligations under clause 24.5 and provided Bidder has by that time acquired the Target Securities in accordance with the Proposal, there is a surplus in the Trust Account, then subject to compliance with applicable laws, the other terms of the Proposal, the Deed Poll and the Implementation Agreement, that surplus (less any bank fees and related charges) shall be paid by the Trustee (or the Registrar on the Trustee's behalf) to Bidder.

#### **24.11 Transfer of Units to Bidder**

- (a) On the Implementation Date, subject to Bidder having provided the Proposal Consideration in the manner contemplated by clause 24.4(a) (and Bidder having provided the Trustee with written confirmation of that having occurred) all of the Units, together with all rights and entitlements attaching to the Units as at the Implementation Date, will be transferred to Bidder.
- (b) The transfer in clause 24.11(a) will occur without the need for any further act by any Proposal Participant (other than acts performed by the Trustee, or any of its directors and officers appointed as sub-attorneys and/or agents of the Trustee, as attorney and/or agent for Proposal Participants under the Proposal), by:
  - (i) the Trustee delivering to Bidder for execution duly completed and, if necessary, stamped Transfers to transfer all of the Units to Bidder, duly executed by the Trustee (or any of its directors and officers appointed as subattorneys and/or agents of the Trustee) as the attorney and/or agent of each Proposal Participant as transferor under clause 24.14;
  - (ii) Bidder immediately executing the Transfers as transferee and delivering them to the Trustee for registration; and
  - (iii) the Trustee, immediately after receipt of the Transfers under paragraph (ii), entering, or procure the entry of, the name and address of Bidder in the Register as the holder of all of the Units.
- (c) The transfer of all of the Units to Bidder in accordance with this clause 24.11 must occur simultaneously with the transfer to Bidder of all of the APTIT Securities in accordance with clause 25.11 of the constitution of APTIT as amended.

#### **24.12 Dealings in Units**

- (a) For the purpose of establishing the persons who are Proposal Participants and determining entitlements to the Proposal Consideration, dealings in Units will only be recognised if:
  - (i) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Register as the holder of the relevant Units by the Record Date; and
  - (ii) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Registrar by 5:00pm on the day which is the Record Date at the place where the Register is located (in which case the Trustee

must register such transfer or transmission application before 7:00pm on that day),

and the Trustee will not accept for registration, nor recognise for any purpose (including the purpose of establishing the persons who are Proposal Participants) other than to transfer to Bidder pursuant to this clause 24 and any subsequent transfers by Bidder or its successors in title, any transfer or transmission application in respect of Units received after the Record Date, or received prior to the Record Date but not in actionable or registrable form (as appropriate).

- (b) The Trustee will, until the Proposal Consideration has been provided and the name and address of Bidder have been entered in the Register as the holder of all of the Target Securities, maintain, or procure the maintenance of, the Register in accordance with this clause 24.12. The Register immediately after registration of registrable transfers or transmission applications of the kind referred to in clause 24.12(a) will solely determine the persons who are Proposal Participants and their entitlements to the Proposal Consideration. As from the Record Date (and other than for Bidder following the Implementation Date), each entry in the Register as at the Record Date relating to Target Securities will cease to have any effect other than as evidence of the entitlements of Proposal Participants to the Proposal Consideration in respect of the Target Securities.
- (c) As soon as possible on or after the Record Date, and in any event within one Business Day after the Record Date, the Trustee will ensure that details of the names, Registered Addresses and holdings of Target Securities for each Proposal Participant as shown in the Register are available to Bidder in the form Bidder reasonably requires.
- (d) Other than Bidder and its successors in title (after registration of Bidder in respect of all Target Securities under clause 24.11), no Proposal Participant (or any person purporting to claim through them) may deal with Target Securities in any way after the Record Date except as set out in this clause 24.12, and any attempt to do so will have no effect.
- (e) Other than in respect of Bidder (after registration of Bidder in respect of all Target Securities under clause 24.11), from the Record Date, all certificates and holding statements (as applicable) for Target Securities as at the Record Date will cease to have any effect as evidence of title, and each entry on the Register as at the Record Date will cease to have any effect other than as evidence of the entitlements of Proposal Participants to the Proposal Consideration.
- (f) Each Proposal Participant, and any person claiming through that Proposal Participant, must not dispose of or purport or agree to dispose of any Target Securities or any interest in them, after 5:00pm on the Record Date other than to Bidder in accordance with the Proposal and any subsequent transfers by Bidder and its successors in title.

### **24.13 Covenants by Holders**

Each Proposal Participant:

- (a) acknowledges that this clause 24 binds the Trustee and all of the Holders from time to time (including those who do not attend the Scheme Meeting, do not vote at the Scheme Meeting or vote against the Proposal Resolutions);

- (b) irrevocably agrees to the transfer of their Target Securities, together with all rights and entitlements attaching to those Target Securities, to Bidder in accordance with the terms of the Proposal, without the need for any further act by that Proposal Participant;
- (c) agrees to the modification or variation (if any) of the rights attaching to their Target Securities arising from this clause 24, without the need for any further act by that Proposal Participant;
- (d) irrevocably consents to the Trustee and Bidder doing all things and executing all deeds, instruments, transfers or other documents (including the Transfers) as may be necessary or desirable to give full effect to the terms of the Proposal and the transactions contemplated by it, without the need for any further act by that Proposal Participant; and
- (e) agrees to provide to the Trustee such information as the Trustee may reasonably require to comply with any law in respect of the Proposal and the transactions contemplated in this clause 24, including information required to meet obligations under the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth).

#### **24.14 Appointment of the Trustee as attorney and as agent for implementation of Proposal**

- (a) Each Proposal Participant, without the need for any further act by that Holder, irrevocably appoints the Trustee as that Proposal Participant's attorney and as that Proposal Participant's agent for the purpose of:
  - (i) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Proposal and the transactions contemplated by it, including effecting a valid transfer or transfers of the Target Securities to Bidder under clause 24.11, including executing and delivering any Transfers; and
  - (ii) enforcing the Deed Poll against Bidder,
 and the Trustee accepts such appointment.
- (b) The Trustee, as attorney and as agent of each Proposal Participant, may sub-delegate its functions, authorities or powers under this clause 24.14 to all or any of its directors and officers (jointly, severally, or jointly and severally).
- (c) Each Proposal Participant indemnifies the Trustee and each of its directors and officers against all losses, liabilities, charges, costs and expenses arising from the exercise of powers under this clause 24.14.

#### **24.15 Appointment of Bidder as attorney and as agent for Target Securities**

- (a) From the time that Bidder has satisfied its obligations in clause 24.4 until Bidder is registered in the Register as the holder of all Target Securities, each Proposal Participant:
  - (i) without the need for any further act by that Proposal Participant, irrevocably appoints the Trustee as its attorney and as its agent (and directs the Trustee in such capacity) to irrevocably appoint Bidder as its sole proxy and, where applicable, corporate representative, for the purpose of:

- (A) attending Holder meetings;
  - (B) exercising the votes attaching to the Units registered in the name of the Holder in the Register; and
  - (C) signing any Holders' resolution;
- (ii) must take all other action in the capacity of a Proposal Participant for the purposes of facilitating the Proposal as Bidder reasonably directs; and
  - (iii) acknowledges and agrees that in exercising the powers referred to in paragraph (i), Bidder and any person nominated by Bidder under paragraph (i) may act in the best interests of Bidder as the intended registered holder of the Target Securities.
- (b) From the time that Bidder has satisfied its obligations in clause 24.4(a) until Bidder is registered in the Register as the holder of all Target Securities, no Proposal Participant may attend or vote at any meetings of Holders or sign any resolution (whether in person, by proxy or by corporate representative) other than under clause 24.15(a).
  - (c) The Trustee undertakes in favour of each Holder that it will appoint the Chairman of Bidder (or other nominee of Bidder) as the Holders' proxy or, where applicable, corporate representative in accordance with clause 24.15(a).

#### **24.16 Status of Target Securities**

- (a) To the extent permitted by law, the Target Securities transferred to Bidder under clause 24.11 will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (b) Each Proposal Participant is deemed to have warranted to Bidder, and, to the extent enforceable, to have appointed and authorised the Trustee as that Proposal Participant's agent and attorney to warrant to Bidder, that all of their Units (and any rights and entitlements attaching to those Units) will, at the time of the transfer of them to Bidder pursuant to the Proposal, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer their Units (together with any rights and entitlements attaching to those Units) to Bidder pursuant to the Proposal. The Trustee undertakes in favour of each Proposal Participant that it will provide such warranty, to the extent enforceable, to Bidder on behalf of that Proposal Participant.
- (c) Bidder will be beneficially entitled to the Target Securities transferred to it under clause 24.11 pending registration by the Trustee of the name and address of Bidder in the Register as the holder of the Target Securities.

#### **24.17 Suspension of quotation of Units**

The Trustee must apply to ASX to suspend trading in the Units with effect from the close of trading on the Effective Date.

#### **24.18 Lapsing**

This clause 24 (except clause 24.5(c)) will lapse and have no further force or effect if the Implementation Agreement terminates in accordance with its terms.

#### **24.19 Notices**

Where a notice, transfer, transmission application, direction or other communication referred to in the Proposal is sent by post to the Trustee, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at the Trust's registered office or by the Registrar, as the case may be.

#### **24.20 Limitation of liability**

Without limiting clause 7.2 but subject to the Corporations Act, the Trustee will not have any liability of any nature whatsoever to Holders, beyond the extent to which the Trustee is actually indemnified out of the assets of the Fund, arising, directly or indirectly, from the Trustee doing or refraining from doing any act (including the execution of a document), matter or thing pursuant to or in connection with the implementation of the Proposal.

# Australian Pipeline Trust Supplemental Deed Signing page

DATED: \_\_\_\_\_

**EXECUTED by AUSTRALIAN  
PIPELINE LIMITED (ABN 99 091 344  
704) IN ITS CAPACITY AS  
RESPONSIBLE ENTITY OF  
AUSTRALIAN PIPELINE TRUST  
(ARSN 091 678 778) in accordance  
with section 127(1) of the *Corporations  
Act 2001* (Cth) by authority of its  
directors:**

.....  
Signature of director

.....  
Name of director (block letters)

.....  
Signature of director/company  
secretary\*  
\*delete whichever is not applicable

.....  
Name of director/company secretary\*  
(block letters)  
\*delete whichever is not applicable

# Annexure B Supplemental Deed Poll – APTIT Constitution



# APT Investment Trust Supplemental Deed

Dated

Australian Pipeline Limited (ACN 091 344 704) ("Trustee")

**King & Wood Mallesons**

Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
**T** +61 2 9296 2000  
**F** +61 2 9296 3999  
DX 113 Sydney  
[www.kwm.com](http://www.kwm.com)

60-3003-4570

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# APT Investment Trust Supplemental Deed Contents

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# APT Investment Trust Supplemental Deed Details

Party	Trustee	
<b>Trustee</b>	Name	<b>Australian Pipeline Limited</b>
	ACN	091 344 704
	Formed in	Australia
	Address	Level 25, 580 George Street SYDNEY NSW 2000
	Email	<a href="mailto:company.secretary@apa.com.au">company.secretary@apa.com.au</a>  (with a copy delivered by email to <a href="mailto:stephen.minns@au.kwm.com">stephen.minns@au.kwm.com</a> and <a href="mailto:will.heath@au.kwm.com">will.heath@au.kwm.com</a> )
	Attention	Nevenka Codevelle, General Counsel & Company Secretary
<b>Governing law</b>	New South Wales	
<b>Recitals</b>	<b>A</b>	The Trustee is the responsible entity of the trust known as the APT Investment Trust (ARSN 115 585 441) ( <b>Trust</b> ).
	<b>B</b>	The Trust is registered as a managed investment scheme under Chapter 5C of the Corporations Act.
	<b>C</b>	The Trust was constituted under the Constitution.
	<b>D</b>	Section 601GC(1) of the Corporations Act provides that the constitution of a registered scheme may be modified, or repealed and replaced with a new constitution:  (a) by special resolution of the members of the scheme; or  (b) by the responsible entity if it reasonably considers the change will not adversely affect members' rights.
	<b>E</b>	Under clause 15 of the Constitution, the Trustee may, subject section 601GC of the Corporations Act, modify the Constitution by executing a deed.

- F The Holders have passed, for the purposes of section 601GC(1)(a), a special resolution approving the amendments to the Constitution set out in this supplemental deed poll.
- G The Trustee proposes to execute this supplemental deed poll to give effect to the approved amendments.

# APT Investment Trust Supplemental Deed General terms

---

## 1 Interpretation

### 1.1 Definitions

In this deed, these words and phrases have the following meanings and any other words and phrases have the meaning given to them in the Constitution, unless the contrary intention appears:

**Constitution** means the document dated 30 June 2005 under which the Trust was constituted, as amended from time to time.

**Effective Time** means the date on and time at which a copy of this Supplemental Deed Poll is lodged with ASIC under section 601GC(2) of the Corporations Act.

### 1.2 Interpretation

Clause 1.2 of the Constitution applies to this deed as if set out in this deed, except that references to “this constitution” are references to this deed.

### 1.3 Deed supplemental to Constitution

This deed is supplemental to the Constitution.

---

## 2 Benefit of this deed

This deed is made by the Trustee with the intent that the benefit of this deed shall inure to the benefit of Holders, jointly and severally.

---

## 3 Modifications to the Constitution

The Constitution is modified on and from the Effective Time in the manner set out in Schedule 1.

---

## 4 No redeclaration

The Manager is not, by this deed:

- (a) redeclaring or resettling the Trust;
- (b) declaring any other trust; or
- (c) causing the transfer, vesting or accruing of property in any person.

---

## 5 Governing law

This deed is governed by the laws in force in the place specified in the Details. Each person affected by it must submit to the non-exclusive jurisdiction of the courts of that place and the courts of appeal from them.

**EXECUTED** as a deed

# APT Investment Trust Supplemental Deed

## Schedule 1 Amendments to Australian Pipeline Trust Constitution

### Amendment 1:

The Constitution is amended by inserting a new sub-paragraph (6) in clause 1.6(b) as follows:

"(6) the divestment is under clause 24."

### Amendment 2:

The Constitution is amended by deleting "or" at the end of sub-paragraph (4) in clause 1.6(b).

### Amendment 3:

The Constitution is amended by inserting "or" at the end of sub-paragraph (5) in clause 1.6(b).

### Amendment 4:

The Constitution is amended by inserting a new clause 6.4(c) as follows:

"(c) the Proposal (as defined in clause 24.1) is a transaction for the purposes of clause 6.4(a). To the extent of any inconsistency between clause 6.4(a) and (b), and clause 24, clause 24 prevails."

### Amendment 5:

The Constitution is amended by inserting a new clause 25 as follows:

---

## 25 Proposal implementation

### 25.1 Definitions

In this clause 25, capitalised terms have the following meaning unless the contrary intention appears (and to the extent of any inconsistency with clause 1.1 these definitions prevail):

**APT** means the Australian Pipeline Trust (ARSN 091 678 778).

**APT Security** means a unit in APT on issue.

**Bidder** means CKM Australia Bidco Pty Ltd (ACN 627 690 608).

**Deed Poll** means the deed poll executed by Bidder and the Guarantors in favour of the Proposal Participants.

**Business Day** means any day that is each of the following:

(a) a business day as defined in the Listing Rules;

- (b) a day that banks are open for business in Sydney, Australia;
- (c) a day that banks are open for business in Hong Kong; and
- (d) a day that banks are open for business in London, United Kingdom,

except that, for the purposes of the definitions of Record Date and Implementation Date, "Business Day" means only a business day as defined in the Listing Rules.

**CHES** means the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement Pty Limited (ABN 49 008 504 532).

**Effective** means when the supplemental deeds poll to implement the Proposal take effect pursuant to section 601GC(2) of the Corporations Act.

**Effective Date** means the date on which the Proposal becomes Effective.

**Guarantors** means:

- (a) CK Asset Holdings Limited of 7th Floor, Cheung Kong Center, 2 Queen's Road, Central, Hong Kong;
- (b) CK Infrastructure Holdings Limited of 12/F Cheung Kong Center, 2 Queen's Rd, Central, Hong Kong.

**Guidance Note 15** means the document titled "Guidance Note 15: Trust scheme mergers" issued by the Takeovers Panel.

**Implementation Agreement** means the Implementation Agreement between the Trustee in its capacity as responsible entity for the Trust, the Trustee in its capacity as responsible entity of APT, Bidder and the Guarantors in respect of the proposal and implementation of the Proposal.

**Implementation Date** means:

- (a) if the Record Date is 6 or more Business Days prior to 31 January 2019, the 5<sup>th</sup> Business Day following the Record Date;
- (b) in all other cases, the 12<sup>th</sup> Business Day following the Record Date; or
- (c) such other day as the Trustee and Bidder agree in writing.

**Proposal** means the arrangement, under which Bidder will acquire all of the Units (and all the APT Securities) from the Proposal Participants by way of inter-conditional trust schemes for the Trust and APT to be implemented in accordance with Guidance Note 15, Regulatory Guide 74 and facilitated by amendments to the constitutions of the Trust and of APT approved by Holders as well as resolutions pursuant to section 611 item 7 of the Corporations Act.

**Proposal Consideration** means the consideration payable by Bidder for the transfer of Target Securities held by a Proposal Participant to Bidder, being, in respect of each Target Security, a cash amount of A\$11.00.

**Proposal Participants** means each person who holds Target Securities as at the Record Date.

**Proposal Resolutions** means the resolutions which, in substance, are as follows:



- (a) an ordinary resolution to approve the Proposal for the purposes of item 7 of section 611 of the Corporations Act (including the acquisition of a Relevant Interest in all the Target Securities by Bidder; and
- (b) conditional on (a), a special resolution for the purposes of section 601GC(1) of the Corporations Act to approve amendments to the constitution of the Trust and the constitution of APT necessary to implement the Proposal.

**Record Date** means 5.00pm on the 4<sup>th</sup> Business Day following the Effective Date or such other date as the Trustee and Bidder agree in writing.

**Registered Address** means, in relation to a Proposal Participant, the address of that Proposal Participant shown on the Register as at the Record Date.

**Regulatory Guide 74** means ASIC's "Regulatory Guide 74 (Acquisitions agreed to by shareholders)".

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

**Scheme Meeting** means the meeting of Holders for the purpose of, inter alia, voting on the Proposal Resolutions.

**Target** means the Trust and APT.

**Target Securities** means the Target stapled securities, each comprising one Unit and one unit in APT, which are on issue as at the Record Date.

**Transfers** means, for each Proposal Participant, a proper instrument of transfer of their Units for the purpose of section 1071B of the Corporations Act (which may be a master transfer of all or part of all of the Units).

**Trust Account** means an Australian dollar denominated trust account operated by the Trustee (or by the Registrar on behalf of the Trustee) as trustee for Proposal Participants.

## 25.2 Implementation of the Proposal

- (a) Each Proposal Participant and the Trustee must do all things and execute all deeds, instruments, transfers or other documents as the Trustee considers are necessary or desirable to give full effect to the terms of the Proposal and the transactions contemplated by it.
- (b) Without limiting the Trustee's other powers under this clause 25.2, the Trustee has power to do all things that it considers necessary or desirable to give effect to the Proposal and the Implementation Agreement.
- (c) Subject to the Corporations Act, the Trustee, the Bidder, the Guarantors, and any of their respective directors, officers, employees or associates, may do any act, matter or thing described in or contemplated by this clause 25.2 even if they have an interest (financial or otherwise) in the outcome.
- (d) This clause 25.2:
  - (i) binds the Trustee and all of the Holders (including those who do not attend the Scheme Meeting, those who do not vote at the Scheme Meeting and those who vote against the Proposal Resolutions); and

- (ii) to the extent of any inconsistency, overrides the other provisions of this Constitution (but, for the avoidance of doubt, remains subject to the Corporations Act and the Listing Rules).

### **25.3 Entitlement to Proposal Consideration**

Each Proposal Participant will be entitled to receive the Proposal Consideration for the Target Securities held by that Proposal Participant.

### **25.4 Deposit of Proposal Consideration**

- (a) Bidder must, by no later than the Business Day before the Implementation Date:
  - (i) deposit (or procure the deposit) in cleared funds into the Trust Account an amount equal to the aggregate amount of the Proposal Consideration payable to all Proposal Participants less any amount remitted to the ATO by way of tax withholding in accordance with clause 18 of the Implementation Agreement;
  - (ii) remit to the ATO any tax withholding required to be remitted under clause 18 of the Implementation Agreement; and
  - (iii) provide written confirmation to the Trustee of the payments required under clause 25.4(a)(i) and 25.4(a)(ii).
- (b) The amount of any interest on the aggregate Proposal Consideration deposited under clause 25.4(a)(i) (less bank fees and other charges) will be to Bidder's account.

### **25.5 Payment to Proposal Participants**

- (a) On the Implementation Date, subject to Bidder having satisfied its obligations in clause 25.4, the Trustee must pay or procure the payment to each Proposal Participant, from the Trust Account, of the Proposal Consideration that the Proposal Participant is entitled to under clause 25.3, less any amount remitted to the ATO by way of tax withholding in accordance with clause 18 of the Implementation Agreement.
- (b) The obligations of the Trustee under clause 25.5(a) will be satisfied by the Trustee (in its absolute discretion):
  - (i) where a Proposal Participant has, before the Record Date, complied with the requirements of the Registrar for nominating a bank account to receive distribution payments that is denominated in Australian currency, paying, or procuring the payment of, the relevant amount in Australian currency into that account by electronic means in accordance with that election;
  - (ii) otherwise, whether or not the Proposal Participant has made an election referred to in paragraph (i), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Proposal Participant by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Proposal Participant (or in the case of joint Holders, in accordance with the procedures set out in clause 25.6).
- (c) If, following satisfaction of Bidder's obligations under clause 25.4, the Proposal lapses under clause 25.18:

- (i) the Trustee must immediately repay (or cause to be repaid) to or at the direction of Bidder the funds that were deposited in the Trust Account plus any interest on the amounts deposited (less bank fees and other charges);
- (ii) the obligation to transfer the Units, together with all rights and entitlements attaching to the Units as at the Implementation Date, to Bidder under clause 25.11 will immediately cease;
- (iii) Bidder must return the Transfers, if provided pursuant to clause 25.11; and
- (iv) the Trustee is no longer obliged to enter, or procure the entry of, the name of Bidder in the Register in accordance with clause 25.12.

## 25.6 Joint Holders

In the case of Target Securities held in joint names:

- (a) any cheque required to be sent under the Proposal will be made payable to the joint Holders and be sent to the holder whose name appears first in the Register as at the Record Date; and
- (b) any other document required to be sent under the Proposal, will be forwarded to either, at the sole discretion of the Trustee, the holder whose name appears first in the Register as at the Record Date or to the joint Holders.

## 25.7 Fractional entitlements

Where the calculation of the Proposal Consideration to be provided to a particular Proposal Participant or the amount to be remitted to the ATO would result in the Proposal Participant becoming entitled to a fraction of a cent or the obligation to remit to the ATO a fraction of a cent (as relevant), the fractional entitlement will be rounded down to the nearest cent.

## 25.8 Cancellation and re-issue of cheques

- (a) The Trustee may cancel a cheque issued under this clause 25 if the cheque:
  - (i) is returned to the Trustee or the Registrar; or
  - (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Proposal Participant to the Trustee or the Registrar) (which request may not be made until the date which is 20 Business Days after the Implementation Date), the Trustee must reissue a cheque that was previously cancelled under clause 25.8(a).

## 25.9 Unclaimed monies

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Proposal Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).

- (b) Any interest or other benefit accruing from unclaimed Proposal Consideration will be to the benefit of Bidder.

#### **25.10 Remaining monies (if any) in Trust Account**

To the extent that, following satisfaction of the Trustee's obligations under clause 25.5 and provided Bidder has by that time acquired the Target Securities in accordance with the Proposal, there is a surplus in the Trust Account, then subject to compliance with applicable laws, the other terms of the Proposal, the Deed Poll and the Implementation Agreement, that surplus (less any bank fees and related charges) shall be paid by the Trustee (or the Registrar on the Trustee's behalf) to Bidder.

#### **25.11 Transfer of Units to Bidder**

- (a) On the Implementation Date, subject to Bidder having provided the Proposal Consideration in the manner contemplated by clause 25.4(a) (and Bidder having provided the Trustee with written confirmation of that having occurred) all of the Units, together with all rights and entitlements attaching to the Units as at the Implementation Date, will be transferred to Bidder.
- (b) The transfer in clause 25.11(a) will occur without the need for any further act by any Proposal Participant (other than acts performed by the Trustee, or any of its directors and officers appointed as sub-attorneys and/or agents of the Trustee, as attorney and/or agent for Proposal Participants under the Proposal), by:
  - (i) the Trustee delivering to Bidder for execution duly completed and, if necessary, stamped Transfers to transfer all of the Units to Bidder, duly executed by the Trustee (or any of its directors and officers appointed as subattorneys and/or agents of the Trustee) as the attorney and/or agent of each Proposal Participant as transferor under clause 25.14;
  - (ii) Bidder immediately executing the Transfers as transferee and delivering them to the Trustee for registration; and
  - (iii) the Trustee, immediately after receipt of the Transfers under paragraph (ii), entering, or procure the entry of, the name and address of Bidder in the Register as the holder of all of the Units.
- (c) The transfer of all of the Units to Bidder in accordance with this clause 25.11 must occur simultaneously with the transfer to Bidder of all of the APT Securities in accordance with clause 24.11 of the constitution of APT as amended.

#### **25.12 Dealings in Units**

- (a) For the purpose of establishing the persons who are Proposal Participants and determining entitlements to the Proposal Consideration, dealings in Units will only be recognised if:
  - (i) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the Register as the holder of the relevant Units by the Record Date; and
  - (ii) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Registrar by 5:00pm on the day which is the Record Date at the place where the Register is located (in which case the Trustee

must register such transfer or transmission application before 7:00pm on that day),

and the Trustee will not accept for registration, nor recognise for any purpose (including the purpose of establishing the persons who are Proposal Participants) other than to transfer to Bidder pursuant to this clause 25 and any subsequent transfers by Bidder or its successors in title, any transfer or transmission application in respect of Units received after the Record Date, or received prior to the Record Date but not in actionable or registrable form (as appropriate).

- (b) The Trustee will, until the Proposal Consideration has been provided and the name and address of Bidder have been entered in the Register as the holder of all of the Target Securities, maintain, or procure the maintenance of, the Register in accordance with this clause 25.12. The Register immediately after registration of registrable transfers or transmission applications of the kind referred to in clause 25.12(a) will solely determine the persons who are Proposal Participants and their entitlements to the Proposal Consideration. As from the Record Date (and other than for Bidder following the Implementation Date), each entry in the Register as at the Record Date relating to Target Securities will cease to have any effect other than as evidence of the entitlements of Proposal Participants to the Proposal Consideration in respect of the Target Securities.
- (c) As soon as possible on or after the Record Date, and in any event within one Business Day after the Record Date, the Trustee will ensure that details of the names, Registered Addresses and holdings of Target Securities for each Proposal Participant as shown in the Register are available to Bidder in the form Bidder reasonably requires.
- (d) Other than Bidder and its successors in title (after registration of Bidder in respect of all Target Securities under clause 25.11), no Proposal Participant (or any person purporting to claim through them) may deal with Target Securities in any way after the Record Date except as set out in this clause 25.12, and any attempt to do so will have no effect.
- (e) Other than in respect of Bidder (after registration of Bidder in respect of all Target Securities under clause 25.11), from the Record Date, all certificates and holding statements (as applicable) for Target Securities as at the Record Date will cease to have any effect as evidence of title, and each entry on the Register as at the Record Date will cease to have any effect other than as evidence of the entitlements of Proposal Participants to the Proposal Consideration.
- (f) Each Proposal Participant, and any person claiming through that Proposal Participant, must not dispose of or purport or agree to dispose of any Target Securities or any interest in them, after 5:00pm on the Record Date other than to Bidder in accordance with the Proposal and any subsequent transfers by Bidder and its successors in title.

### **25.13 Covenants by Holders**

Each Proposal Participant:

- (a) acknowledges that this clause 25 binds the Trustee and all of the Holders from time to time (including those who do not attend the Scheme Meeting, do not vote at the Scheme Meeting or vote against the Proposal Resolutions);

- (b) irrevocably agrees to the transfer of their Target Securities, together with all rights and entitlements attaching to those Target Securities, to Bidder in accordance with the terms of the Proposal, without the need for any further act by that Proposal Participant;
- (c) agrees to the modification or variation (if any) of the rights attaching to their Target Securities arising from this clause 25, without the need for any further act by that Proposal Participant;
- (d) irrevocably consents to the Trustee and Bidder doing all things and executing all deeds, instruments, transfers or other documents (including the Transfers) as may be necessary or desirable to give full effect to the terms of the Proposal and the transactions contemplated by it, without the need for any further act by that Proposal Participant; and
- (e) agrees to provide to the Trustee such information as the Trustee may reasonably require to comply with any law in respect of the Proposal and the transactions contemplated in this clause 25, including information required to meet obligations under the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth).

#### **25.14 Appointment of the Trustee as attorney and as agent for implementation of Proposal**

- (a) Each Proposal Participant, without the need for any further act by that Holder, irrevocably appoints the Trustee as that Proposal Participant's attorney and as that Proposal Participant's agent for the purpose of:
  - (i) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Proposal and the transactions contemplated by it, including effecting a valid transfer or transfers of the Target Securities to Bidder under clause 25.11, including executing and delivering any Transfers; and
  - (ii) enforcing the Deed Poll against Bidder,
 and the Trustee accepts such appointment.
- (b) The Trustee, as attorney and as agent of each Proposal Participant, may sub-delegate its functions, authorities or powers under this clause 25.14 to all or any of its directors and officers (jointly, severally, or jointly and severally).
- (c) Each Proposal Participant indemnifies the Trustee and each of its directors and officers against all losses, liabilities, charges, costs and expenses arising from the exercise of powers under this clause 25.14.

#### **25.15 Appointment of Bidder as attorney and as agent for Target Securities**

- (a) From the time that Bidder has satisfied its obligations in clause 25.4 until Bidder is registered in the Register as the holder of all Target Securities, each Proposal Participant:
  - (i) without the need for any further act by that Proposal Participant, irrevocably appoints the Trustee as its attorney and as its agent (and directs the Trustee in such capacity) to irrevocably appoint Bidder as its sole proxy and, where applicable, corporate representative, for the purpose of:

- (A) attending Holder meetings;
  - (B) exercising the votes attaching to the Units registered in the name of the Holder in the Register; and
  - (C) signing any Holders' resolution;
- (ii) must take all other action in the capacity of a Proposal Participant for the purposes of facilitating the Proposal as Bidder reasonably directs; and
  - (iii) acknowledges and agrees that in exercising the powers referred to in paragraph (i), Bidder and any person nominated by Bidder under paragraph (i) may act in the best interests of Bidder as the intended registered holder of the Target Securities.
- (b) From the time that Bidder has satisfied its obligations in clause 25.4(a) until Bidder is registered in the Register as the holder of all Target Securities, no Proposal Participant may attend or vote at any meetings of Holders or sign any resolution (whether in person, by proxy or by corporate representative) other than under clause 25.15(a).
  - (c) The Trustee undertakes in favour of each Holder that it will appoint the Chairman of Bidder (or other nominee of Bidder) as the Holders' proxy or, where applicable, corporate representative in accordance with clause 25.15(a).

#### **25.16 Status of Target Securities**

- (a) To the extent permitted by law, the Target Securities transferred to Bidder under clause 25.11 will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (b) Each Proposal Participant is deemed to have warranted to Bidder, and, to the extent enforceable, to have appointed and authorised the Trustee as that Proposal Participant's agent and attorney to warrant to Bidder, that all of their Units (and any rights and entitlements attaching to those Units) will, at the time of the transfer of them to Bidder pursuant to the Proposal, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer their Units (together with any rights and entitlements attaching to those Units) to Bidder pursuant to the Proposal. The Trustee undertakes in favour of each Proposal Participant that it will provide such warranty, to the extent enforceable, to Bidder on behalf of that Proposal Participant.
- (c) Bidder will be beneficially entitled to the Target Securities transferred to it under clause 25.11 pending registration by the Trustee of the name and address of Bidder in the Register as the holder of the Target Securities.

#### **25.17 Suspension of quotation of Units**

The Trustee must apply to ASX to suspend trading in the Units with effect from the close of trading on the Effective Date.

### **25.18 Lapsing**

This clause 25 (except clause 25.5(c)) will lapse and have no further force or effect if the Implementation Agreement terminates in accordance with its terms.

### **25.19 Notices**

Where a notice, transfer, transmission application, direction or other communication referred to in the Proposal is sent by post to the Trustee, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at the Trust's registered office or by the Registrar, as the case may be.

### **25.20 Limitation of liability**

Without limiting clause 7.2 but subject to the Corporations Act, the Trustee will not have any liability of any nature whatsoever to Holders, beyond the extent to which the Trustee is actually indemnified out of the assets of the Fund, arising, directly or indirectly, from the Trustee doing or refraining from doing any act (including the execution of a document), matter or thing pursuant to or in connection with the implementation of the Proposal.



# APT Investment Trust Supplemental Deed Signing page

DATED: \_\_\_\_\_

**EXECUTED by AUSTRALIAN  
PIPELINE LIMITED (ABN 99 091 344  
704) IN ITS CAPACITY AS  
RESPONSIBLE ENTITY OF APT  
INVESTMENT TRUST (ARSN 115 585  
441) in accordance with section 127(1)  
of the *Corporations Act 2001* (Cth) by  
authority of its directors:**

.....  
Signature of director

.....  
Name of director (block letters)

.....  
Signature of director/company  
secretary\*  
\*delete whichever is not applicable

.....  
Name of director/company secretary\*  
(block letters)  
\*delete whichever is not applicable

# Annexure C Deed Poll

# Deed Poll

Dated \_\_\_\_\_

CKM Australia Bidco Pty Ltd ("**Bidder**")

CK Infrastructure Holdings Limited ("**CKI**")

CK Asset Holdings Limited ("**CKA**")

Power Assets Holdings Limited ("**PAH**")

In favour of each Proposal Participant

**King & Wood Mallesons**

Level 50  
Bourke Place  
600 Bourke Street  
Melbourne VIC 3000  
Australia  
T +61 3 9643 4000  
F +61 3 9643 5999  
DX 101 Melbourne  
[www.kwm.com](http://www.kwm.com)

# Deed Poll

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# Deed Poll

## Details

<b>Parties</b>	<b>Bidder, CKI, CKA and PAH</b>	
<b>Bidder</b>	Name	CKM Australia Bidco Pty Ltd
	Registration no.	ACN 627 690 608
	Formed in	Victoria, Australia
	Address	Level 33, 101 Collins Street, Melbourne, Victoria, Australia 3000
	Email	<a href="mailto:eirene.yeung@ckah.com">eirene.yeung@ckah.com</a> , <a href="mailto:victor.luk@cki.com.hk">victor.luk@cki.com.hk</a> and <a href="mailto:alexng@powerassets.com">alexng@powerassets.com</a>  (with a copy delivered by email to <a href="mailto:Richard.Kriedemann@allens.com.au">Richard.Kriedemann@allens.com.au</a> and <a href="mailto:Wendy.Rae@allens.com.au">Wendy.Rae@allens.com.au</a> )
	Attention	Victor Luk, Group General Counsel, CK Infrastructure Holdings Limited  Eirene Yeung, Member of Executive Committee and Company Secretary, CK Asset Holdings Limited  Alex Ng, Group Legal Counsel and Company Secretary, Power Assets Holdings Limited
<b>CKI</b>	Name	CK Infrastructure Holdings Limited
	Address	12/F Cheung Kong Center, 2 Queen's Road, Central, Hong Kong
	Email	<a href="mailto:victor.luk@cki.com.hk">victor.luk@cki.com.hk</a>  (with a copy delivered by email to <a href="mailto:Richard.Kriedemann@allens.com.au">Richard.Kriedemann@allens.com.au</a> and <a href="mailto:Wendy.Rae@allens.com.au">Wendy.Rae@allens.com.au</a> )
	Attention	Victor Luk, Group General Counsel
<b>CKA</b>	Name	CK Asset Holdings Limited
	Address	7 <sup>th</sup> Floor, Cheung Kong Center, 2 Queen's Road, Central, Hong Kong
	Email	<a href="mailto:eirene.yeung@ckah.com">eirene.yeung@ckah.com</a>  (with a copy delivered by email to

[Richard.Kriedemann@allens.com.au](mailto:Richard.Kriedemann@allens.com.au) and  
[Wendy.Rae@allens.com.au](mailto:Wendy.Rae@allens.com.au))

Attention Eirene Yeung, Member of Executive Committee  
and Company Secretary

---

**PAH**

Name Power Assets Holdings Limited

Address Rooms 1913-1914, 19/F, Hutchison House, 10  
Harcourt Road, Central, Hong Kong

Email [alexng@powerassets.com](mailto:alexng@powerassets.com)  
  
(with a copy delivered by email to  
[Richard.Kriedemann@allens.com.au](mailto:Richard.Kriedemann@allens.com.au) and  
[Wendy.Rae@allens.com.au](mailto:Wendy.Rae@allens.com.au))

Attention Alex Ng, Group Legal Counsel and Company  
Secretary, Power Assets Holdings Limited

---

**In favour of** Each Proposal Participant.

---

**Governing law** New South Wales

---

**Recitals**

A Australian Pipeline Limited (ABN 99 091 344 704) in its capacity as responsible entity of Australian Pipeline Trust (ARSN 091 678 778), Australian Pipeline Limited (ABN 99 091 344 704) in its capacity as responsible entity of APT Investment Trust (ARSN 115 585 441), Bidder and each Guarantor have entered into an Implementation Agreement dated [*date*] ("**Implementation Agreement**").

B In the Implementation Agreement, Target RE agreed to propose the Proposal, pursuant to which, subject to the satisfaction or waiver of the Conditions Precedent, Bidder will acquire all of the Target Securities from Proposal Participants for the Proposal Consideration.

C In accordance with the Implementation Agreement, Bidder and each Guarantor (acting severally in its Relevant Proportion) is entering into this Deed Poll for the purpose of covenanting in favour of Proposal Participants to perform its obligations under the Implementation Agreement and the Proposal.

---

# Deed Poll

## General terms

---

### 1 Definitions and interpretation

#### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

**Details** means the section of this document headed “Details”.

**Implementation Agreement** has the meaning given in Recital A in the Details.

**Trust Account** has the meaning given in Schedule 1 of the Supplemental Deeds Poll.

All other words and phrases used in this document have the same meaning as given to them in the Implementation Agreement.

#### 1.2 General interpretation

The provisions of clause 1.2 of the Implementation Agreement form part of this Deed Poll as if set out in this Deed Poll, and on the basis that references to “this document” in that clause are references to this Deed Poll.

#### 1.3 Nature of deed poll

Bidder and each Guarantor acknowledges that:

- (a) this Deed Poll may be relied on and enforced by any Proposal Participant in accordance with its terms, even though the Proposal Participants are not a party to it; and
- (b) under the Proposal, each Proposal Participant irrevocably appoints Target RE and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this Deed Poll against Bidder and the Guarantors on behalf of that Proposal Participant.

#### 1.4 Several obligations

Notwithstanding anything else in this Deed Poll, each Guarantor’s liability under this Deed Poll is several and is equal to its Relevant Proportion at any given time for all obligations and liabilities of the Guarantors under this Deed Poll.

---

### 2 Conditions precedent and termination

#### 2.1 Conditions precedent

The obligations of Bidder and each Guarantor under this Deed Poll are subject to the Proposal becoming Effective.

## 2.2 Termination

Unless Target RE, Bidder and each Guarantor otherwise agree in writing, the obligations of Bidder and each Guarantor under this Deed Poll will automatically terminate and the terms of this Deed Poll will be of no further force or effect if:

- (a) the Proposal has not become Effective on or before the End Date; or
- (b) the Implementation Agreement is terminated in accordance with its terms.

## 2.3 Consequences of termination

If this Deed Poll is terminated under clause 2.2, then, in addition and without prejudice to any other rights, powers or remedies available to Proposal Participants:

- (a) Bidder and each Guarantor is released from its obligations to further perform this Deed Poll, except those obligations contained in clause 7; and
- (b) each Proposal Participant retains any rights, powers or remedies they have against Bidder and each Guarantor in respect of any breach of its obligations under this Deed Poll which occur before termination of this Deed Poll.

---

## 3 Performance of obligations generally

- (a) Bidder covenants in favour of each Proposal Participant that it will observe and perform all obligations contemplated of it under Schedule 1 of each Supplemental Deed Poll and under this Deed Poll including, in each case, all obligations relating to the provision of the Proposal Consideration.
- (b) Each Guarantor severally covenants in its Relevant Proportion in favour of each Proposal Participant that it will procure that Bidder observes and performs all obligations contemplated of Bidder under Schedule 1 of each Supplemental Deed Poll and under this Deed Poll; and including, in each case, all obligations relating to the provision of the Proposal Consideration.

---

## 4 Representations and warranties

Bidder and each Guarantor make the following representations and warranties in favour of Target RE and each Proposal Participant:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(capacity)** it has full legal capacity and power to enter into this Deed Poll and to carry out the transactions that this Deed Poll contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Deed Poll and its carrying out of the transactions that this Deed Poll contemplates;
- (d) **(compliance)** the execution and performance by it of this Deed Poll and each transaction contemplated by this Deed Poll did not, and will not, violate or contravene:



- (i) any law to which it is subject or any order of any Government Agency that is binding on it;
  - (ii) any ruling, court decree, undertaking or instrument binding on, or applicable to, Bidder or any member of the Bidder Group;
  - (iii) any Encumbrance, instrument or document which is binding on Bidder or any of its assets; or
  - (iv) its constituent documents;
- (e) **(authorisations)** it holds each authorisation that is necessary for it to:
- (i) execute this Deed Poll and to carry out the transactions that this Deed Poll contemplates; and
  - (ii) ensure that this Deed Poll is legal, valid, binding and admissible in evidence;
- (f) **(validity of obligations)** its obligations under this Deed Poll are legal, valid and binding and are enforceable against it in accordance with its terms;
- (g) **(solvency)** it is not Insolvent; and
- (h) **(no default)** to the best of its knowledge and belief, this Deed Poll does not conflict with or result in the breach of or a default under any document, agreement or instrument to which Bidder is party or subject or by which it is bound nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect.

---

## 5 Exculpation

- (a) Subject to clause 5(b), if a Guarantor:
- (i) irrevocably and unconditionally provides Bidder with its Relevant Proportion of the funding necessary for Bidder to deposit the Proposal Consideration into the Trust Account; and
  - (ii) uses all reasonable endeavours to procure that Bidder complies with its obligations under this Deed Poll, including by exercising any rights available to it under the Consortium Arrangements (if the Consortium Arrangements are entered into),

then that Guarantor will have no further liability under this Deed Poll.

- (b) The Guarantors and Bidder agree that they will take all steps necessary to ensure that if any Guarantor contributes its Relevant Proportion of the funding necessary for Bidder to deposit the Proposal Consideration into the Trust Account, then the amount contributed will be retained by Bidder until such time as Bidder has discharged in full its obligations in relation to the provision of the Proposal Consideration in accordance with Schedule 1 of each Supplemental Deed Poll and with this Deed Poll.

---

## 6 Continuing obligations

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

- (a) Bidder and each Guarantor has fully performed its obligations under this Deed Poll; or
- (b) the earlier termination of this Deed Poll under clause 2.2.

---

## 7 Costs and Stamp duty

- (a) Bidder and each Guarantor must bear their own costs in connection with the preparation, negotiation, execution and completion of this Deed Poll.
- (b) Bidder must, and each Guarantor must procure that Bidder does:
  - (i) pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this Deed Poll or any other transaction contemplated by this Deed Poll (including any fees, fines, penalties and interest in connection with any of these amounts); and
  - (ii) indemnify each Proposal Participant against, and agrees to reimburse and compensate it, for any liability in respect of stamp duty, registration fees and similar taxes under clause 7(b)(i).

---

## 8 Notices

Notices and other communications in connection with this Deed Poll must be in writing. They must be sent to the address or email address referred to in the Details and (except in the case of email) marked for the attention of the person referred to in the Details. If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

---

## 9 General

### 9.1 Variation

A provision of this Deed Poll or any right created under it may not be varied, altered or otherwise amended unless:

- (a) either:
  - (i) before the Second Judicial Advice Date, the amendment or variation is agreed to by Target RE (provided that such approval may be given or withheld without reference to, or approval by, any Target Securityholder) and Bidder in writing; and
  - (ii) on or after the Second Judicial Advice Date, the amendment or variation is agreed to by Target RE (provided that such approval may be given or withheld without reference to, or approval by, any Target Securityholder) and Bidder in writing, and is approved by the Court; and
- (b) Bidder and each Guarantor enter into a further deed poll in favour of the Proposal Participants giving effect to the variation, alteration or

amendment and in which, amongst other things and where applicable, each Guarantor's obligations will be several and in its Relevant Proportions.

## **9.2 Partial exercising of rights**

Unless this Deed Poll expressly states otherwise, if Bidder or any Guarantor does not exercise a right, power or remedy in connection with this Deed Poll fully or at a given time, it may still exercise it later.

## **9.3 Remedies cumulative**

The rights, powers and remedies in connection with this Deed Poll are in addition to other rights, powers and remedies given by law independently of this Deed Poll.

## **9.4 Assignment or other dealings**

Bidder, each Guarantor and each Proposal Participant may not assign or otherwise deal with its rights under this Deed Poll or allow any interest in them to arise or be varied without the consent of Bidder, each Guarantor and Target RE.

## **9.5 Further steps**

Bidder and each Guarantor agrees to do anything including executing all documents and do all things (on its own behalf or on behalf of each Proposal Participant) necessary to give full effect to this Deed Poll and the transactions contemplated by it.

---

# **10 Governing law and jurisdiction**

## **10.1 Governing law and jurisdiction**

- (a) The law in force in the place specified in the Details governs this Deed Poll.
- (b) Bidder and each Guarantor irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in that place and courts competent to determine appeals from those courts in respect of any proceedings arising out of or in connection with this document.
- (c) Bidder and each Guarantor irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

## **10.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this Deed Poll may be served on Bidder or any Guarantor by being delivered or left at Bidder's and the relevant Guarantor's address set out in the Details.

**EXECUTED** as a deed poll

# Deed Poll

## Signing page

**DATED:** \_\_\_\_\_

**Bidder**

**Executed** as a deed in accordance with  
section 127 of the *Corporations Act*  
2001 (Cth) by **CKM AUSTRALIA BIDCO PTY**  
**LTD (ACN 627 690 608):**

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

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Guarantors**

**SEALED** with the **COMMON SEAL** of **CK**  
**INFRASTRUCTURE HOLDINGS LIMITED** )  
(長江基建集團有限公司) and )  
signed by )

and )

duly authorised by resolution of )  
director(s) in the presence of: )

..... )

Signature of witness )

..... )

Name of witness (block letters) )

..... )

Address of witness

**SEALED** with the **COMMON SEAL** of **CK** )  
**ASSET HOLDINGS LIMITED** (長江實業 )  
集團有限公司) a company )  
incorporated in Cayman Islands, and )  
SIGNED by )

and )

duly authorised by resolution of )  
director(s) in the presence of / whose )  
signature(s) is/are verified by:- )

..... )  
Signature of witness )

..... )  
Name of witness (block letters) )

..... )  
Address of witness )

**SEALED** with the **COMMON SEAL** of )  
**POWER ASSETS HOLDINGS LIMITED** )  
(電能實業有限公司) )

and SIGNED by )

and )

duly authorised by resolution of )  
directors in the presence of: )

..... )  
Signature of witness )

..... )  
Name of witness (block letters) )

..... )  
Address of witness )

.....

.....