

# ASX/MEDIA RELEASE

Date: 16 February 2016

## ASCIANO RECOMMENDS QUBE CONSORTIUM PROPOSAL

---

Asciano Limited (**Asciano**) (ASX:AIO, OTCUS:AIOYY) announced on 8 February 2016 that it had received a revised proposal from Qube Holdings Limited (**Qube**), Global Infrastructure Partners (**GIP**), Canada Pension Plan Investment Board (**CPPIB**) and CIC Capital Corporation (**CIC Capital**) (together, the **Qube Consortium**) to acquire up to 100% of the issued capital of Asciano (**Qube Consortium Proposal**).

### Expiration of matching right period

As required under the amended Bid Implementation Deed between Asciano and Brookfield Infrastructure Partners Limited (**Brookfield Infrastructure**) dated 9 November 2015 (**Brookfield BID**), Asciano issued a notice to Brookfield Infrastructure on 8 February 2016 providing Brookfield Infrastructure with a right to submit, within five business days, a matching or superior proposal to the Qube Consortium Proposal.

The matching right period concluded at the end of Monday, 15 February 2016. Brookfield Infrastructure did not submit a matching or superior proposal within this period.

### Change in Asciano Board recommendation

As previously announced, the Asciano Board has determined that the Qube Consortium Proposal is superior to the proposal from Brookfield Infrastructure announced on 9 November 2015 (**Brookfield Offer**). The Asciano Board has considered the Qube Consortium Proposal and the Brookfield Offer and unanimously recommends the Qube Consortium Proposal to Asciano shareholders.

The Asciano Board recommends that Asciano shareholders accept the takeover offer to be made under the Qube Consortium Proposal in respect of all of their Asciano shares, subject to:

- Asciano not receiving a superior proposal; and
- an independent expert opining that the takeover offer and the sale of each of the Ports and BAPS businesses is fair and reasonable to Asciano shareholders.

Asciano has now signed binding transaction documentation with the Qube Consortium including an implementation deed in relation to the takeover offer (**Qube Consortium Implementation Deed**), together with sale agreements in relation to Patrick's container terminal business and a 50% interest in Australian Amalgamated Terminals (**Ports**) and the Bulk & Automotive Port Services businesses and a 50% interest in ACFS Port Logistics (**BAPS**).

The Brookfield BID will now be terminated and the Brookfield takeover bid is expected to lapse at 7.00pm on 18 February 2016. Asciano will also apply to the court for orders to cancel the Scheme Meeting in respect of the Brookfield Offer.

As a result of the change in recommendation in favour of the Qube Consortium Proposal, a break fee of A\$88 million will be paid to Brookfield Infrastructure. Asciano will treat the break fee as a material item of A\$88 million pre tax (A\$61.6 million after tax) in its FY16 full year financial results.

### Overview of the Qube Consortium Proposal

As announced on 8 February 2016, the Qube Consortium Proposal involves GIP, CPPIB and CIC Capital, through a jointly owned bid vehicle (**BidCo**) is making an off-market takeover bid to acquire all of the shares in Asciano for consideration of A\$7.04 cash (including the amount of permitted dividends) and 1 Qube share per Asciano share.

If ATO approval is obtained in respect of the special dividend, Asciano is permitted to pay fully-franked dividends of up to A\$0.97 per share (**Permitted Dividends**), in aggregate, comprising an interim<sup>1</sup> and special dividend, to enable franking benefits of up to A\$0.416 per share to be distributed to eligible Asciano shareholders.<sup>2</sup> To the extent that Permitted Dividends are paid, the A\$7.04 cash component of the consideration will be reduced by the amount of the Permitted Dividends.<sup>3</sup>

The Qube Consortium Proposal currently has an implied value of:

- A\$9.025 per Asciano share based on Qube's closing price of A\$1.985 on 15 February 2016;
- A\$9.17 per Asciano share based on the volume weighted average of Qube's shares for the 30 trading days leading up to and including 15 February 2016.

The implied offer value (including the amount of the permitted dividends) represents a 35.7% premium to the undisturbed Asciano share price on 30 June 2015 (the day prior to the announcement of receipt of the initial Brookfield proposal) and an EV/EBITDA multiple of 10.4x for the year ended 30 June 2015.<sup>4</sup>

Under the Qube Consortium Proposal, Qube will acquire 100% of Ports for an enterprise value of A\$2,650 million and BAPS will be sold to an entity to be established and owned initially by GIP, CPPIB and CIC Capital (**BAPS HoldCo**) for an enterprise value of A\$850 million. BAPS HoldCo will seek to sell the BAPS businesses to a third party or parties. Qube may also seek to acquire certain of the BAPS assets, subject to regulatory approvals. The sale of Ports and BAPS is subject to approval of the shareholders of Asciano, ACCC approval and the takeover offer by BidCo becoming unconditional. The proceeds from the sales of Ports to Qube and BAPS to BAPS HoldCo (net of any funding obtained by Asciano to fund the Permitted Dividends) will be returned to Asciano shareholders who do not accept the takeover offer by way of a pro rata capital return<sup>5</sup> after the takeover completes.

<sup>1</sup> The interim dividend is not subject to an ATO ruling.

<sup>2</sup> Whether a shareholder is able to capture the full benefit of the franking credits will depend on their personal tax circumstances, including whether they satisfy relevant holding period rules.

<sup>3</sup> The quantum of any dividends paid will be determined by the Asciano Board, but will not exceed a level that may be fully franked based on available franking credits, which may be less than A\$0.97 per Asciano share.

<sup>4</sup> Based on offer consideration of A\$9.025 per share based on the Qube closing price of A\$1.985 on 15 February 2016 and Asciano net debt of A\$3.1bn as at 30 June 2015.

<sup>5</sup> An ATO ruling will be sought in relation to the proposed capital return, which will determine its composition including the dividend component, if any.

The Qube Consortium Proposal is subject to a number of key terms including (among others):

- Conditions precedent including:
  - Minimum acceptance condition of 50.1% of Asciano shares on issue;<sup>6</sup>
  - Regulatory approvals (FIRB, ACCC, NZ OIO, European Commission, and any required ASIC or ASX approvals);
  - no Asciano prescribed occurrences or material adverse change occurring;
- Approval by ordinary resolution of Asciano shareholders of the sale of Ports and BAPS and the payment of net proceeds to Asciano shareholders who do not accept the takeover offer by way of a pro rata capital return;
- Exclusivity provisions (including no shop and no talk, fiduciary exception, notification of approaches, matching right); and
- Break fee equal to A\$88 million payable upon a change of control of Asciano or a material breach by Asciano of the terms of the Qube Consortium Implementation Deed.

Further details are contained in the Qube Consortium Implementation Deed which is set out in full in Annexure A.

### Next steps and further information

Asciano shareholders do not need to take any action at the present time.

The Qube Consortium expects to release a Bidder's Statement and Asciano expects to release a Target's Statement and Notice of Meeting containing further details and information regarding the takeover offer and the sale of Ports and BAPS in the coming weeks.

Asciano shareholders can obtain further information by contacting the Asciano Shareholder Information Line on 1300 729 310 for shareholders located in Australia, and +61 3 9415 4608 for shareholders located outside Australia.

For further information, please contact:

Investors and analysts	Media
Kelly Hibbins	Richard Baker
tel: +61 2 8484 8046	tel: +61 2 8484 8103
mobile: +61 414 609 192	mobile: +61 408 985 008
email: <a href="mailto:kelly_hibbins@asciano.com.au">kelly_hibbins@asciano.com.au</a>	email: <a href="mailto:media@asciano.com.au">media@asciano.com.au</a>

- Ends -

<sup>6</sup> Includes the relevant interest held by the Qube Consortium.

## **ANNEXURE A**

## Bid Implementation Deed

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

© Allens, Australia 2016

## Contents

<b>1</b>	<b>Definitions and Interpretation</b>	<b>1</b>
1.1	Definitions	1
1.2	Interpretation	17
1.3	Several Obligations	18
1.4	BidCo to have the benefit of Deed	18
1.5	Consents and approvals	18
<b>2</b>	<b>The Bid</b>	<b>18</b>
2.1	Offer by BidCo	18
2.2	Offer Consideration	19
2.3	Reasonable endeavours regarding Conditions	19
2.4	Variation of Offer	20
2.5	Waiver of Conditions	20
2.6	Termination on Failure of Conditions	21
2.7	Certain Notices	21
<b>3</b>	<b>Documentation and Facilitation of Bid</b>	<b>22</b>
3.1	Timetable	22
3.2	Bidder's Statement	22
3.3	Target's Statement	22
3.4	Notice of Meeting	23
3.5	Co-operation by parties in relation to documentation	23
3.6	Despatch of documentation	24
3.7	Provision of register information	24
3.8	Failure to satisfy minimum bid price condition	24
3.9	Offer extension	25
3.10	Alternative scheme of arrangement	25
<b>4</b>	<b>Conduct of Business and Other Obligations</b>	<b>25</b>
4.1	Conduct of the Target Group business	25
4.2	Ports Sale Agreement and BAPS Sale Agreement	26
4.3	Restructure of Target Group	27
4.4	Conduct of the Qube Group business	27
4.5	Access to information and co-operation	28
4.6	Commercially sensitive or competitive information	31
<b>5</b>	<b>Appointment of Directors</b>	<b>31</b>
5.1	Appointment of Directors to Target Board	31
5.2	Deeds of indemnity and insurance	31
<b>6</b>	<b>Target Rights and Target Permitted Dividends</b>	<b>32</b>
6.1	Target Rights	32
6.2	Target Permitted Dividends	33
<b>7</b>	<b>Target Board Recommendations and Intentions</b>	<b>33</b>
7.1	Target Board recommendation	33
7.2	Target Director intentions	34
7.3	Support for the Takeover Bid	35
7.4	Change in recommendation	35
<b>8</b>	<b>Public Announcements</b>	<b>35</b>
<b>9</b>	<b>Confidentiality</b>	<b>36</b>

<b>10</b>	<b>Representations and Warranties</b>	<b>36</b>
10.1	Target representations and warranties	36
10.2	Target's indemnity	37
10.3	Qube representations and warranties	38
10.4	Qube indemnity	39
10.5	BidCo Shareholders' representations and warranties	39
10.6	BidCo Shareholders' indemnity	40
10.7	Reliance by parties	40
10.8	Notifications	41
10.9	Status of representations and warranties	41
10.10	Survival of indemnities	41
10.11	Timing of representations and warranties	41
<b>11</b>	<b>Releases</b>	<b>41</b>
11.1	Target directors and officers	41
11.2	BidCo Shareholders' directors and officers	42
11.3	Qube directors and officers	42
<b>12</b>	<b>Exclusivity</b>	<b>42</b>
12.1	No shop and no talk	42
12.2	Fiduciary exception	43
12.3	Notification of approaches	43
12.4	Matching right	44
12.5	Cease discussions	45
12.6	Provision of information	45
12.7	Legal advice	46
<b>13</b>	<b>Break Fee</b>	<b>46</b>
13.1	Background to Break Fee	46
13.2	Break Fee triggers	46
13.3	Timing of payment of Break Fee	47
13.4	Basis of Break Fee	47
13.5	Compliance with law	47
13.6	Break Fee payable only once	48
13.7	Other Claims	48
13.8	No Break Fee if Bid proceeds	48
<b>14</b>	<b>Termination</b>	<b>48</b>
14.1	Termination for material breach	48
14.2	Termination for breach of representations and warranties	49
14.3	Effect of termination	49
14.4	Termination	50
14.5	No other termination	50
<b>15</b>	<b>GST</b>	<b>50</b>
15.1	Recovery of GST	50
15.2	Liability net of GST	50
15.3	Adjustment events	50
15.4	Cost exclusive of GST	50
15.5	Survival	50
15.6	Definitions	51
<b>16</b>	<b>Trustee Limitation of Liability</b>	<b>51</b>

<b>17</b>	<b>Notices</b>	<b>51</b>
<b>18</b>	<b>Miscellaneous</b>	<b>53</b>
18.1	No waiver	53
18.2	Remedies cumulative	53
18.3	Entire agreement	53
18.4	Amendment	54
18.5	Assignment	54
18.6	No merger	54
18.7	Further assurances	54
18.8	Costs and duty	54
18.9	Severability of provisions	54
18.10	Service of process	54
18.11	Governing law and jurisdiction	55
18.12	Counterparts	55
<b>Schedule 1</b>		<b>56</b>
	Conditions	56
<b>Schedule 2</b>		<b>59</b>
	Agreed Bid Terms	59
<b>Schedule 3</b>		<b>60</b>
	Target Rights	60
<b>Schedule 4</b>		<b>61</b>
	Capital Details	61
<b>Schedule 5</b>		<b>62</b>
	Indicative Timetable	62
<b>Schedule 6</b>		<b>63</b>
	Shareholder Resolutions	63



**This Deed** is made on 16 February 2016

## Parties

- 1 The following entities:
  - **Global Infrastructure Management Australia Pty Ltd** (ACN 132 664 745) in its capacity as trustee of the **GIP Bell Australia Unit Trust** of Level 17, Gateway Building, 1 Macquarie Place, Sydney NSW 2000 (**GIP**).
  - **Canada Pension Plan Investment Board**, a Canadian Crown corporation of One Queen Street East, Suite 2500, Toronto, Ontario, Canada M5C2WC (**CPPIB**).
  - **Beijing Shunrong Investment Corporation** of 1939, 19/F, No. 1 Chaoyangmen Beidajie, Dongcheng District, Beijing, 100010, China (**Shunrong**).
- 2 **Qube Holdings Limited** (ACN 149 723 053) of Level 27, 45 Clarence Street Sydney NSW 2000 (**Qube**).
- 3 **Asciano Limited** (ACN 123 652 862) of Level 6, 15 Blue Street, North Sydney, NSW 2060 (**Target**).

## Recitals

- A The BidCo Shareholders, through BidCo, propose to make an off-market takeover bid to acquire up to all of the Target Shares.
- B It is intended that the consideration under the takeover bid will be part cash and part Qube Shares. Part of the cash will be payable by Qube to accepting Target Shareholders in accordance with the Qube Deed Poll. BidCo's obligation to provide the Qube Shares to accepting Target Shareholders to be satisfied by BidCo procuring Qube to issue those new Qube Shares to those Target Shareholders.
- C The Target Directors are proposing to recommend the Bid to Target Shareholders.
- D It is a pre-requisite to the Bid being made and the Target Directors making the recommendation that the parties enter into this Deed.
- E The Target, Qube and a Subsidiary of Qube have entered into the Ports Sale Agreement, under which (subject to the Bid becoming unconditional and the other conditions in the Ports Sale Agreement being satisfied) the Target has agreed to sell all of the issued shares in the Subsidiary of the Target which is the holding company of the Ports Businesses to a Subsidiary of Qube.
- F The Target and the BidCo Shareholders have entered into the BAPS Sale Agreement, under which (subject to the Bid becoming unconditional and the other conditions in the BAPS Sale Agreement being satisfied) the Target has agreed to sell all of the issued shares in the Subsidiary of the Target which is the holding company of the the BAPS Business to BAPS HoldCo or to a nominee of BAPS HoldCo.

**It is agreed** as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**AAT** means Australian Amalgamated Terminals Pty Ltd (ACN 098 458 229) including, for the avoidance of doubt, any related shareholder loan owed by that entity to the Target Group.

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

**Acceptance Target Shares** means Target Shares which are accepted into the Offer and / or acquired pursuant to post-Offer compulsory acquisition of Target Shares, as the context requires.

**ACFS** means ACFS Port Logistics Pty Limited (ACN 603 120 047).

**Adviser** means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity to the market in general and who has been engaged by that entity.

**Agreed Bid Terms** means the terms and conditions of the Bid set out in Schedule 2.

**Agreement** means this agreement, including any schedule or annexure to this agreement.

**Announcement Date** means:

- (a) the date on which this Deed is executed; or
- (b) if this Deed is executed on a day that is not a Trading Day or is executed on a Trading Day but after ASX's market announcements office has closed for the day, the first Trading Day immediately following the day of execution.

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

**Associate** has the meaning given in section 12(2) of the Corporations Act, where the Target is the 'designated body'.

**ASX** means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as 'ASX' operated by ASX Limited.

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

**ATO** means the Australian Taxation Office.

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

**BAPS HoldCo** means a proprietary company to be incorporated under the Corporations Act, the issued shares of which are ultimately to be owned by the BidCo Shareholders (or, in respect of any BidCo Shareholder, one or more of its Related Corporations).

**BAPS Sale Agreement** means the agreement dated on or about the date of this Deed between GIP, Perpetual Corporate Trust Limited (ACN 000 341 533) (in its capacity as trustee of the CPPIB Australia Trust), Shunrong and the Target pursuant to which the Target agrees to sell all of the issued shares in BAPSCo to the Buyer under that agreement.

**BAPSCo** has the meaning given in clause 4.3(e).

**Bid** means an off-market takeover bid by BidCo for all of the Target Shares, to be implemented in accordance with Chapter 6 of the Corporations Act and this Deed.

**BidCo** means a proprietary company to be incorporated under the Corporations Act, the issued shares of which are ultimately to be owned by the BidCo Shareholders (or, in respect of any BidCo Shareholder, one or more of its Related Corporations).

**BidCo Agreed Announcement** means a public announcement concerning the Bid substantially in the form initialled or identified by the parties prior to the execution of this Deed, to be made by BidCo in accordance with clause 8.

**BidCo Respective Proportion** means:

- (a) with respect to GIP, 30%;
- (b) with respect to CPPIB, 50%;
- (c) with respect to Shunrong, 20%.

**BidCo Shareholders** means GIP, CPPIB and Shunrong (irrespective of whether any one or more of them holds shares in BidCo at any given time).

**Bid Independent Expert's Report** means the report to be issued by the Independent Expert in connection with the Bid.

**Bid Timetable** means the indicative timetable for the implementation of the Bid set out in Schedule 5.

**Bidder Indemnified Parties** means BidCo, the BidCo Shareholders and the Related Corporations of the BidCo Shareholders, and their respective Officers.

**Bidder's Statement** means the bidder's statement relating to the Bid to be prepared by BidCo.

**Break Fee** means an amount equal to A\$88 million (exclusive of GST).

**Brookfield Group Entity** means any entity that is part of the Brookfield Group (as defined in the Brookfield Implementation Deed) and any Associate of any such entity.

**Brookfield Implementation Deed** means the implementation deed dated 17 August 2015 between the Target and Brookfield Infrastructure Partners Limited as general partner of Brookfield Infrastructure Partners L.P. as amended and restated on 9 November 2015 and otherwise as may be further amended, varied, supplemented or replaced from time to time.

**Brookfield Proposal** means the proposal described in the Brookfield Implementation Deed, and any variation or replacement of that proposal.

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

- (a) a Business Day within the meaning given in the ASX Listing Rules; and
- (b) a day that banks are open for business in Sydney, Australia, Toronto, Canada, New York, the United States of America and Beijing, People's Republic of China (except for a Saturday or a Sunday, or a day which is a public holiday in the People's Republic of China).

**Commercially Sensitive or Competitive Information** means information that is commercially sensitive or competitive (and includes customer contracts, past and future non-public pricing information, customer proposals, tenders, quotes, expressions of interest and contracts due for renewal, access agreements, input costs and third-party contracts, product and service profit margins, board minutes, an entity's FY16 strategy plan and counterparty risk assessments and market analysis and, without limitation, in respect of the BidCo Shareholders, includes any non-public information in relation to the BidCo Shareholders' investment businesses and portfolio or investee companies or those of any of its Related Corporations.)

**Competing Proposal** means any proposal, agreement, arrangement or transaction, which, if entered into or completed, would result in a Third Party (either alone or together with any Associate):

- (a) directly or indirectly acquiring a Relevant Interest in, or having a right to acquire, a legal, beneficial or economic interest in, or control of, 20% or more of Target Shares or of the share capital of any material Subsidiary of the Target;
- (b) acquiring Control of the Target or any material Subsidiary of the Target;
- (c) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a material part of the Target's business or assets or the business or assets of the Target Group (and for this purpose, without limitation, each of the Ports Businesses and the Pacific National intermodal business is to be considered a material part of the Target's business);
- (d) otherwise directly or indirectly acquiring or merging with the Target or a material Subsidiary of Target; or
- (e) requiring Target to abandon, or otherwise fail to proceed with, the Bid,

whether by way of takeover bid, members' or creditors' scheme of arrangement, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets and 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 (and includes any variation of an earlier Competing Proposal). For the avoidance of doubt, "Competing Proposal" includes any Brookfield Proposal.

**Completion** means the completion of acquisitions of Target Shares under the Bid (and, in circumstances where compulsory acquisition is available, completion of the compulsory acquisition process under Chapter 6A of the Corporations Act).

**Conditions** means the Bid conditions set out in Schedule 1.

**Confidentiality Agreement** means the Mutual Confidentiality Deed dated 20 November 2015 between GIP, CPPIB, Qube and the Target.

**Consortium Respective Proportion** means:

- (a) with respect to GIP, 20.57%;
- (b) with respect to CPPIB, 34.28%;
- (c) with respect to Shunrong, 13.71%; and
- (d) with respect to Qube, 31.44%.

**Control** has the meaning given to that term in section 50AA of the Corporations Act, and

**Controlled** has a corresponding meaning.

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

**Disclosure Letter** means the letter identified as such and provided by the Target to the BidCo Shareholders and Qube on 7 February 2016 and which has been countersigned by the BidCo Shareholders and Qube.

**Disclosure Materials** means:

in respect of the Target:

- (a) the documents and information contained in the data room made available prior to 7 February 2016 by the Target to the BidCo Shareholders and their Representatives, the index of which has been initialled by, or on behalf of, the relevant parties for identification;
- (b) the document containing the written responses prior to 7 February 2016 from the Target and its Representatives to requests for further information made by BidCo Shareholders

and their respective Representatives, a copy of which has been initialled by, or on behalf of, the relevant parties for identification;

- (c) the documents and information made available prior to 7 February 2016 by the Target to Qube and its Representatives, a list of which has been initialled by, or on behalf of, the relevant parties for identification; and
- (d) the document containing the written responses prior to 7 February 2016 from the Target and its Representatives to requests for further information made by Qube and its Representatives, a copy of which has been initialled by, or on behalf of, the relevant parties for identification; and
- (e) the Disclosure Letter; and

in respect of Qube:

- (f) the documents and information made available by Qube prior to 7 February 2016 to the Target and its Representatives, a list of which has been initialled by, or on behalf of, the relevant parties for identification; and
- (g) the document containing the written responses, prior to 7 February 2016, from Qube and its Representatives to requests for further information made by the Target and its Representatives, a copy of which has been initialled by, or on behalf of, the relevant parties for identification.

**End Date** means the date which is six months after the date of this Deed.

**Exclusivity Period** means the period commencing on the date of this Deed and ending on the earlier of:

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

**Fairly Disclosed** means publicly disclosed to ASIC or ASX, or disclosed to the relevant party or its Representatives to the extent that, and in sufficient detail so as to enable, a reasonable person (or one of its Representatives) experienced in transactions similar to the Offer (and the acquisition of Target Shares under the Offer) and experienced in a business similar to any business conducted by the Target Group or the Qube Group (as the case requires), to identify the nature and scope of the relevant matter, event, circumstance or thing, and **Fair Disclosure** has a corresponding meaning.

**FY** means financial year.

**General Meeting** has the meaning given in clause 3.4(a).

**Governmental Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body (including a court), department, commission, authority, tribunal, agency, competition authority or entity and includes any minister (including, for the avoidance of doubt, the Commonwealth Treasurer), the Foreign Investment Review Board, ASIC, the ACCC, the ATO, ASX, the Takeovers Panel, the Overseas Investment Office (New Zealand), the Australian Competition Tribunal and any regulatory organisation established under statute or any stock exchange.

**Independent Expert** means the person appointed by the Target to prepare:

- (a) Bid Independent Expert's Report; and
- (b) the NOM Independent Expert's Report.

**Insolvency Event** means, in relation to an entity:

- (a) the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity;
- (b) a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;
- (c) the entity executing a deed of company arrangement;
- (d) the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this Deed;
- (e) the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation) or is otherwise presumed to be insolvent under the Corporations Act unless the entity has, or has access to, committed financial support from its parent entity such that it is able to pay its debts; or
- (f) the entity being deregistered as a company or otherwise dissolved.

**Material Contract** means any agreement, contract, deed or other arrangement or instrument to which a Target Group Member is a party that is identified as such in the Disclosure Letter.

**NOM Independent Expert's Report** has the meaning given in clause 3.4(b)(ii).

**Notice of Meeting** has the meaning given in clause 3.4(b)(i).

**Offer Consideration** means the consideration to be offered in respect of each Target Share under the Bid as specified in section 1 of Schedule 2, as may be varied from time to time.

**Offer Period** means the period during which the Offer is open for acceptance, as may be extended by BidCo in accordance with the Corporations Act.

**Offer** means each offer to acquire the Target Shares to be made by BidCo to Target Shareholders under the Bid.

**Officer** means, in relation to an entity, any of its directors, officers and employees.

**Permitted Qube Securities Issue** means any issue of shares or other securities (including any securities convertible into shares or other securities):

- (a) by way of or under a placement, of no more than 15% of Qube Shares on issue (including all Qube Shares issued or to be issued as Offer Consideration and/or by way of or under an offer referred to in (b) or (d)), providing:
  - (i) the issue price of shares reflects a maximum discount of 5% to the volume weighted average market price of Qube Shares based on trading on the ASX over the 5 trading days prior to the date of the agreement to issue or as otherwise agreed between Qube and Target; and
  - (ii) the placement is undertaken in accordance with the ASX Listing Rules and does not require any ASX waiver, ASIC relief or Qube shareholder approval unless otherwise agreed between Qube and Target;
- (b) by way of or under an entitlement offer, where the theoretical ex rights price of the entitlement offer is no less than 98.0% of the volume weighted average market price of Qube Shares based on trading on the ASX over the 5 trading days prior to the announcement of such entitlement offer;
- (c) where the issue price is greater than or equal to \$2.20 per Qube Share; or

- (d) by way of or under an entitlement offer, where the Offer has ended and each Target Shareholder who accepts the Offer and has complied with sections 620(2)(a) or (b) of the Corporations Act will be entitled to participate;
- (e) by way of or under an employee incentive scheme (including any security issued upon conversion, vesting or exercise of rights attaching to any security issued under an employee incentive scheme);
- (f) by way of or under any dividend reinvestment plan (including pursuant to any underwriting of that plan);
- (g) by way of or under any share purchase plan; or
- (h) in any other circumstances, providing that Target Shareholders who accept the Offer (or whose shares are compulsorily acquired) receive an additional number of Qube Shares per Target Share (or an equivalent amount in cash, calculated at the theoretical ex rights price implied by the equity raising under this limb) as consideration within the Offer, calculated as follows:

$$N * (A + B) / (A + ((B * C) / D)) - N$$

where:

A = The number of Qube Shares on issue prior to the issuance of additional Qube Shares;

B = The number of additional Qube Shares issued;

C = The issue price for the additional Qube Shares;

D = the 5 day volume weighted average market price of Qube Shares trading on the ASX immediately prior to the date of the agreement to issue; and

N = The number of Qube Shares to be issued in respect of each Target Share that applied immediately prior to the issuance of additional Qube Shares.

For the avoidance of doubt, this paragraph (h) will apply only if it results in a positive number.

**PortCo** has the meaning given in clause 4.3(a).

**Ports and BAPS EBITDA** means the earnings before interest expense, tax, depreciation and amortisation and significant and non-recurring items, consistent with “underlying EBITDA” as defined in the Target’s 2015 Annual Report of the Ports Businesses and BAPS Businesses taken together.

**Ports Businesses** means:

- (a) the entities, businesses and assets comprising the Terminals & Logistics business of the Target Group, other than the Target Group’s 50% interest in a joint venture, being ACFS. For the avoidance of doubt, this includes the Target Group’s CargoLink business and excludes the Target Group’s regional road and rail business; and
- (b) the Target Group’s 50% shareholding interest in AAT.

**Ports Sale Agreement** means the agreement dated on or about the date of this Deed between Qube, a Subsidiary of Qube and the Target pursuant to which the Target agrees to sell, and the relevant Subsidiary of Qube has agreed to purchase, all of the issued shares in PortCo.

**Qube Cash Amount** has the meaning given in the Qube Deed Poll.

**Qube Deed Poll** means the deed poll entered into by Qube on the date of this Deed under which Qube covenants in favour of holders of Acceptance Target Shares to pay the Qube Cash Amount in accordance with the deed poll.



**Qube EBITDA** means earnings before interest expense, tax, depreciation and amortisation and certain significant and non-recurring items, consistent with the use of “underlying EBITDA” and the equity accounted income in Qube's financial reports from time to time.

**Qube Group** means Qube and its Subsidiaries.

**Qube Group Member** means an entity that is part of the Qube Group.

**Qube Indemnified Parties** means the Qube Group and their respective Officers.

**Qube Material Adverse Change** means an event, change, condition, matter, circumstance or thing occurring before, on or after the date of this Deed (each a **Specified Event**) which, whether individually or when aggregated with all such events, changes, conditions, matters, circumstances or things of a like kind that have occurred or are reasonably likely to occur, has had or would be considered reasonably likely to have:

- (a) a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Qube Group taken as a whole;
- (b) without limiting the generality of paragraph (a):
  - (i) the effect of a diminution in the value of the consolidated net tangible assets of Qube by at least 20% against what it would reasonably have been expected to have been but for such Specified Event; or
  - (ii) the effect of a diminution in the consolidated Qube EBITDA of Qube by at least 20% in any financial year for the Qube Group against what they would reasonably have been expected to have been but for such Specified Event,

other than those events, changes, conditions, matters, circumstances or things:

- (c) required or permitted by a Transaction Document or the Bid or the transactions contemplated by any of them;
- (d) that are Fairly Disclosed in Qube's Disclosure Materials;
- (e) agreed to in writing by the Target;
- (f) that Qube Fairly Disclosed in an announcement made by Qube to ASX, or a document lodged by it with ASIC that is publicly available, since 1 January 2014 but prior to 7 February 2016;
- (g) resulting from changes in law or in general economic, political or business conditions; or
- (h) resulting from any change occurring directly as a result of a general deterioration in equity markets, interest rates, exchange rates or credit spreads, that impacts Qube and its competitors in a similar manner.

**Qube Performance Right** means a right granted, which if and when vested, gives the holder the right to acquire a Qube Share.

**Qube Prescribed Occurrence** means other than as:

- (a) required or permitted by a Transaction Document or the Bid or the transactions contemplated by any of them;
- (b) Fairly Disclosed in Qube's Disclosure Materials;
- (c) agreed to in writing by Target (such agreement not to be unreasonably withheld or delayed); or
- (d) Fairly Disclosed by Qube in an announcement made by Qube to the ASX, or a document lodged by it with ASIC that is publicly available, since 1 January 2014 but prior to 7 February 2016,



the occurrence of any of the following (and, for the avoidance of doubt, in the case of any occurrence subject to a monetary threshold, the monetary threshold stated will be exclusive of and in addition to any amount required, permitted, agreed to or disclosed as provided above):

- (e) Qube converting all or any of its shares into a larger or smaller number;
- (f) Qube reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (g) the Qube Representation or Warranty in paragraph (n) of clause 10.3 being inaccurate;
- (h) Qube issuing, agreeing to issue or announcing an intent to issue any shares or other securities (including any securities convertible into shares or other securities), excluding (for the avoidance of doubt) any Permitted Qube Securities Issue, or any agreement to make any Permitted Qube Securities Issue or announcing an intent to make any Permitted Qube Securities;
- (i) Qube making any change to its constitutional documents;
- (j) Qube declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning any capital to its members, or agreeing or announcing an intention to do any of the above, other than a Qube interim dividend on Qube Shares in respect of the half-year ending 31 December 2015 for an amount not exceeding A\$0.03 per Qube Share;
- (k) Qube or a Subsidiary disposing, or agreeing to dispose, of the whole, or a substantial part, of the Qube Group's business or property;
- (l) an Insolvency Event occurs in relation to Qube or a material Subsidiary;
- (m) the occurrence of any review event or event of default under any third party loan to Qube or a material Subsidiary and the taking of any step by any lender thereunder to enforce the terms thereof and which results, or is reasonably likely to result, in a Qube Material Adverse Change;
- (n) Qube Shares cease to be quoted on the ASX;
- (o) a Qube Group Member resolving to reduce its share capital in any way other than to a directly or indirectly Wholly-Owned Subsidiary of Qube;
- (p) a Qube Group Member entering into a buy back agreement or resolving to approve the terms of a buy-back agreement under section 257C(1) or 257D(1) of the Corporations Act;
- (q) other than in the ordinary course of Qube's current business (including in connection with a project or initiative that has been Fairly Disclosed in the manner described in paragraphs (b) or (d) of this definition), a Qube Group Member:
  - (i) acquiring, leasing or disposing of;
  - (ii) agreeing to acquire, lease or dispose of; or
  - (iii) offering, proposing, announcing a bid or tendering for,

any business, assets, entity or undertaking, the value of which exceeds A\$100,000,000 individually or A\$200,000,000 in aggregate; or
- (r) other than in the ordinary course of Qube's current business (including in connection with a project or initiative that has been Fairly Disclosed in the manner described in paragraphs (b) or (d) of this definition), a Qube Group Member:
  - (i) entering into any contract or commitment requiring payments by the Qube Group in excess of A\$100,000,000 individually or \$200,000,000 in aggregate;

- (ii) (without limiting the foregoing) agreeing to incur capital expenditure from the date of this Deed of more than A\$100,000,000 individually or \$200,000,000 in aggregate;
- (iii) waiving any material Third Party default where the financial impact on the Qube Group will be in excess of A\$50,000,000 (individually or in aggregate); or
- (iv) accepting as a compromise of a matter less than the full compensation due to a member of the Qube Group where the financial impact of the compromise on the Qube Group is more than A\$50,000,000 (individually or in aggregate).

**Qube Promissory Notes** has the meaning given in paragraph (c) of Resolution 3 in Schedule 6.

**Qube Share** means a fully paid ordinary share in Qube.

**Regulatory Approval** means an approval, consent, clearance, notice of no objection, waiver, confirmation, exemption, declaration, notice of intention not to object or intervene, authorisation or anything similar set out in paragraphs (a), (b), (c), (d), (e), (f) and (g) of Schedule 1.

**Related Corporation** has the meaning given to Related Body Corporate in the Corporations Act, but on the basis that Subsidiary has the meaning given in this Deed and that body corporate includes any entity, a trust, a limited partnership and a general partnership, and, in addition, for the purposes of this Deed:

- (a) a Related Corporation of GIP includes:
  - (i) Global Infrastructure Management, LLC and its Related Corporations; and
  - (ii) Global Infrastructure Partners II-A, L.P., its parallel investment entities and alternative investment vehicles, and each of their respective Related Corporations; and
- (b) a Related Corporation of Shunrong means China Investment Corporation (**CIC**) and its Subsidiaries (but excluding Central Huijin Investment Ltd. and its Subsidiaries, and any person or entity which would have been considered to be an Associate of CIC solely due to the fact that such person or entity is under common control with CIC, whether directly or indirectly, by a government or governmental agency).

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

**Representative** means, in relation to a person:

- (a) a Related Corporation of the person; or
- (b) an Officer of the person or any of the person's Related Corporations; or
- (c) an Adviser or agent to the person or any of the person's Related Corporations.

**Rights** means all accretions, rights and benefits of whatever kind attaching to or arising from the Target Shares directly or indirectly at or after the Announcement Date, including any capital returns, all dividends and all rights to receive them and rights to receive or subscribe for shares, notes, bonds, options or other securities or entitlements declared, paid or issued by the Target or any Subsidiary of Target.

**Security Interest** has the meaning given in section 51A of the Corporations Act.

**Shareholder Resolutions** means the resolutions in the form set out in Schedule 6 or as otherwise agreed between the parties.

**Subsidiary** has the meaning given in the Corporations Act, as supplemented so that:

- (a) an entity will also be considered to be a Subsidiary of a body corporate if it is Controlled by that body corporate;

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

**Superior Proposal** means a bona fide Competing Proposal of the kind referred to in any of paragraphs (b), (c) and (d) of the definition of Competing Proposal (and not resulting from a breach by the Target of any of its obligations under clause 12 of this Deed (it being understood that any actions by the Representatives of the Target in breach of clause 12 shall be deemed to be a breach by the Target for the purposes hereof)) which the Target Board, acting in good faith, and after receiving written legal advice from its external legal advisor and written advice from its financial advisor, determines:

- (a) is reasonably capable of being valued and completed in a timely fashion taking into account all aspects of the Competing Proposal including any timing considerations, any conditions precedent or other matters affecting the probability of the Competing Proposal being completed, and the identity of the proponent; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to Target Shareholders (as a whole) than the Bid (as the Bid has been amended or varied following application of the matching right set out in clause 12.4, if applicable), taking into account all terms and conditions of the Competing Proposal (including, consideration, conditionality, funding, certainty and timing).

For the avoidance of doubt, a Competing Proposal will not constitute a Superior Proposal if its terms and conditions are substantively similar to any proposal that the Target received, negotiated or was otherwise involved with at any time before the date of this Deed other than any Brookfield Proposal.

**Takeovers Panel** means the Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001* (Cth).

**Target Agreed Announcement** means a public announcement concerning the Bid substantially in the form initialled or identified by the parties prior to the execution of this Deed, to be made by the Target in accordance with clause 8.

**Target Board** means the board of directors of the Target (as constituted from time to time), and includes any authorised committee of directors.

**Target Consolidated Tax Group** means the consolidated group of which the Target is the head company (where 'consolidated group' and 'head company' have the same meaning as in the *Income Tax Assessment Act 1997* (Cth)).

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

**Target EBITDA** means earnings before interest expense, tax, depreciation and amortisation and significant and non-recurring items, consistent with "underlying EBITDA" and the equity accounted income in the Target's financial reports from time to time.

**Target Executive Incentive Plan Rules** means the employee incentive plan rules of that name issued by the Target.

**Target Group** means the Target and its Subsidiaries.

**Target Group Member** means an entity that is part of the Target Group.

**Target Indemnified Parties** means the Target, its Subsidiaries and their respective Officers.

**Target Long Term Incentive Plan Rules** means the employee incentive plan rules of that name issued by the Target.

**Target Material Adverse Change** means an event, change, condition, matter, circumstance or thing occurring before, on or after the date of this Deed (each a **Specified Event**) which, whether individually or when aggregated with all such events, changes, conditions, matters, circumstances or things of a like kind that have occurred or are reasonably likely to occur, has had or would be considered reasonably likely to have:

- (a) a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Target Group taken as a whole; or
- (b) without limiting the generality of paragraph (a):
  - (i) the effect of a diminution in the value of the consolidated net tangible assets of
    - (A) the Target Group, taken as a whole, by at least 10% against what it would reasonably have been expected to have been but for such Specified Event; or
    - (B) the Ports Businesses and BAPS Businesses together, by at least 20% against what it would reasonably have been expected to have been but for such Specified Event; or
  - (ii) the effect of a diminution in:
    - (A) the consolidated Target EBITDA of the Target Group, taken as a whole, by at least 10% in any financial year for the Target Group; or
    - (B) the Ports and BAPS EBITDA, by at least 20% in the FY 16 financial year for the Target Group,
 against either (i) what they would reasonably have been expected to have been in the relevant financial year but for such Specified Event; or (ii) FY 15 consolidated Target EBITDA or FY15 Ports and BAPS EBITDA (as the case may be),

other than those events, changes, conditions, matters, circumstances or things:

- (c) required or permitted by a Transaction Document or the Bid or the transactions contemplated by any of them;
- (d) that are Fairly Disclosed in the Target's Disclosure Materials;
- (e) agreed to in writing by the BidCo Shareholders and Qube;
- (f) that the Target Fairly Disclosed in an announcement made by the Target to ASX, or a document lodged by it with ASIC that is publicly available, since 1 January 2014 but prior to 7 February 2016;
- (g) resulting from changes in law or in general economic, political or business conditions; or
- (h) resulting from any change occurring directly as a result of a general deterioration in equity markets, interest rates, exchange rates or credit spreads, that impacts the Target and its competitors in a similar manner.

**Target Permitted Dividends** means:

- (a) an interim dividend on Target Shares in respect of the half-year ending 31 December 2015; and
  - (b) a Target Permitted Special Dividend on Target Shares,
- which in aggregate do not exceed A\$0.97 per Target Share.

**Target Permitted Special Dividend** means a special dividend paid on Target Shares of up to A\$0.97 per Target Share as referred to in clause 6.2.

**Target Permitted Special Dividend Payment Date** means the date for payment of a Target Permitted Dividend, being a date before the Offer is declared or becomes unconditional and 3 Business Days after the relevant Target Permitted Dividend Record Date, or as otherwise agreed between the parties.

**Target Permitted Special Dividend Record Date** means 5.00pm on a date that is at least 2 clear Business Days before the Offer is declared or becomes unconditional or otherwise agreed between the parties.

**Target Prescribed Occurrence** means, other than as:

- (a) required or permitted by a Transaction Document or the Bid or the transactions contemplated by any of them;
- (b) Fairly Disclosed in the Target's Disclosure Materials;
- (c) agreed to in writing by the BidCo Shareholders and Qube (such agreement not to be unreasonably withheld or delayed); or
- (d) Fairly Disclosed by the Target in an announcement made by the Target to ASX, or a document lodged by it with ASIC that is publicly available, since 1 January 2014 but prior to 7 February 2016,

the occurrence of any of the following (and, for the avoidance of doubt, in the case of any occurrence subject to a monetary threshold, the monetary threshold stated will be exclusive of and in addition to any amount required, permitted, agreed to or disclosed as provided above):

- (e) the Target converting all or any of its shares into a larger or smaller number of shares;
- (f) the Target reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares (other than any on market acquisitions of shares to satisfy the vesting of any Target Rights which are in existence as at 7 February 2016 or which have been granted as permitted by this Deed);
- (g) the warranty in clause 10.1(k) being inaccurate;
- (h) a Target Group Member declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members, or announcing an intention to do any of the above, other than:
  - (i) to a directly or indirectly Wholly-Owned Subsidiary of the Target; or
  - (ii) paying the Target Permitted Dividends or the Dividend or Capital Return identified in Resolution 3 of Schedule 6; or
  - (iii) any pro rata distribution to members made by an entity of which the Target or any Subsidiary is a member;
- (i) the Target making any change to its constitution;
- (j) a Target Group Member resolving to reduce its share capital in any way other than to a directly or indirectly Wholly-Owned Subsidiary of the Target;
- (k) a Target Group Member entering into a buy back agreement or resolving to approve the terms of a buy-back agreement under section 257C(1) or 257D(1) of the Corporations Act;
- (l) a Target Group Member issuing shares or granting an option over its shares (provided that the issue or grant of a Target Right is not to be regarded as the issue of a share or option for the purposes of this item), or agreeing to make such an issue or grant such an option other than:
  - (i) to a directly or indirectly Wholly-Owned Subsidiary of the Target; or

- (ii) the issue of shares upon the vesting of any Target Rights where the Target believes, acting reasonably, that the purchase of shares on market may be a breach of law;
- (m) a Target Group Member issuing, or agreeing to issue, convertible notes (including any issue or grant of Target Rights) other than:
  - (i) to a directly or indirectly Wholly-Owned Subsidiary of the Target;
  - (ii) a grant of Target Rights resulting in the number of Target Rights on issue not exceeding 3,358,581;
  - (iii) a grant of an additional number of Target Rights that may be granted under the current FY16 STI plan calculated in accordance with the arrangements Fairly Disclosed in the Disclosure Letter; or
  - (iv) if Completion has not occurred prior to 30 June 2016, a grant of Target Rights for FY 17 in the ordinary course of the Target's business not exceeding 50,000 Target Rights in aggregate;
- (n) a Target Group Member disposing, or agreeing to dispose, of the whole, or a substantial part, of the Target Group's business or property (and for this purpose, without limitation. the Pacific National intermodal business is to be considered a substantial part of the Target Group's business);
- (o) a Target Group Member granting a Security Interest, or agreeing to grant a Security Interest, in the whole, or a substantial part, of the Target Group's business or property;
- (p) an Insolvency Event occurs in relation to a Target Group Member;
- (q) a Target Group Member:
  - (i) acquiring or disposing of;
  - (ii) agreeing to acquire or dispose of; or
  - (iii) offering, proposing or announcing a bid for, any business, entity or undertaking, the value of which exceeds A\$30,000,000 individually or A\$100,000,000 in aggregate;
- (r) a Target Group Member:
  - (i) entering into any contract or commitment requiring payments by the Target Group in excess of:
    - (A) in respect of the Target Group as a whole, A\$100,000,000 (individually or in aggregate); or
    - (B) in respect of the Ports Businesses or BAPS Businesses, A\$30,000,000 individually;
  - (ii) (without limiting the foregoing) agreeing to incur capital expenditure from the date of this Deed of more than:
    - (A) in respect of the Target Group as a whole, A\$100,000,000 (individually or in aggregate); or
    - (B) in respect of the Ports Businesses or BAPS Businesses, A\$30,000,000 individually;
  - (iii) waiving any material Third Party default where the financial impact on the Target Group will be in excess of:

- (A) in respect of the Target Group as a whole, A\$50,000,000 (individually or in aggregate); or
  - (B) in respect of the Ports Businesses or BAPS Businesses, A\$30,000,000 individually;
- (iv) accepting as a compromise of a matter less than the full compensation due to a member of the Target Group where the financial impact of the compromise on the Target Group is more than:
  - (A) in respect of the Target Group as a whole, A\$50,000,000 (individually or in aggregate); or
  - (B) in respect of the Ports Businesses or BAPS Businesses, A\$30,000,000 individually;
- (s) a Target Group Member:
  - (i) terminating any Material Contract; or
  - (ii) varying, amending or modifying any Material Contract;
- (t) a Target Group Member entering into, or resolving to enter into, a transaction with any related party of the Target (other than a related party that is a Target Group Member), as defined in section 228 of the Corporations Act;
- (u) a Target Group Member amending in any material respect any agreement or arrangement with a financial adviser, or entering into an agreement or arrangement with a new financial adviser, in respect of the Bid or a Competing Proposal;
- (v) a Target Group Member paying any of the Target Directors, officers or senior executives a termination or retention payment in excess of A\$5,000,000 (in aggregate), other than in accordance with contractual arrangements in effect on 7 February 2016 and which are contained in the Target's Disclosure Materials;
- (w) the occurrence of any review event or event of default after the date of this Deed under any third party loan to the Target or a Subsidiary of the Target and the taking of any step by any lender thereunder to enforce the terms thereof and which results, or is reasonably likely to result, in a Target Material Adverse Change;
- (x) Target Shares cease to be quoted on the ASX; or
- (y) Target contravenes the Corporations Act and such contravention results in a Target Material Adverse Change.

**Target Register** means the register of members of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

**Target Regulated Event** means, other than as:

- (a) required or permitted by a Transaction Document or the Bid or the transactions contemplated by any of them;
- (b) Fairly Disclosed in the Target's Disclosure Materials;
- (c) agreed to in writing by the BidCo Shareholders and Qube; or
- (d) Fairly Disclosed by the Target in an announcement made by the Target to ASX, or a document lodged by it with ASIC that is publicly available, since 1 January 2014 but prior to 7 February 2016,

the occurrence of any of the following:



- (e) a Target Group Member commencing business activities of a nature not already carried out as at the date of this Deed, whether by way of acquisition or otherwise;
- (f) a Target Group Member, other than in the ordinary course of business, entering into a contract or commitment restraining a Target Group Member from competing with any person or conducting activities in any market;
- (g) a Target Group Member providing financial accommodation other than to a Target Group Member (irrespective of what form that accommodation takes) in excess of A\$50,000,000 (individually or in aggregate);
- (h) a Target Group Member entering into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments other than in the ordinary course of business;
- (i) a Target Group Member entering into or materially altering, varying or amending any employment, consulting, severance or similar agreement or arrangement with one or more of its Officers, or accelerating or otherwise materially increasing compensation or benefits for any of the above, in each case other than pursuant to:
  - (i) contractual arrangements in effect on 7 February 2016 and which are contained in the Target's Disclosure Materials; or
  - (ii) the Target's policies and guidelines in effect on 7 February 2016 and which are contained in the Target's Disclosure Materials;

provided that in order for increases in compensation or benefits to fall within the above carve-outs, the aggregate of all such increases must be no greater than A\$10,000,000;
- (j) a Target Group Member entering into any enterprise bargaining agreement other than in the ordinary course of business or pursuant to contractual arrangements in effect on 7 February 2016 and which are contained in the Target's Disclosure Materials;
- (k) a Target Group Member changing any accounting policy applied by them to report their financial position other than any change in policy required by a change in accounting standards; or
- (l) a Target Group Member doing anything that would result in a change in the Target Consolidated Tax Group.

**Target Right** means either:

- (a) a performance right or a deferred right granted pursuant to the Target Executive Incentive Plan Rules; or
- (b) a performance right granted pursuant to the Target Long Term Incentive Plan Rules.

**Target Share** means a fully paid ordinary share in the Target.

**Target Shareholder** means a person who is registered in the Target Register as a holder of one or more Target Shares from time to time.

**Target's Statement** means the target's statement relating to the Bid to be prepared by the Target.

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

- (a) a person other than BidCo, a BidCo Shareholder or Qube; or
- (b) a consortium, partnership, limited partnership, syndicate or other group in which none of BidCo, any BidCo Shareholder or Qube has agreed in writing to be a participant,



and includes each entity within the Brookfield Group (as defined in the Brookfield Implementation Deed).

**Trading Day** has the meaning given in the ASX Listing Rules.

**Transaction Documents** means this Deed, the Ports Sale Agreement and the BAPS Sale Agreement.

**Wholly-Owned Subsidiary** means, in relation to an entity, a Subsidiary of the entity, all of the issued shares, units or partnership or other beneficial interests of which are or will be directly or indirectly owned by that entity.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.
- (c) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
- (d) The following rules apply unless the context requires otherwise:
  - (i) The singular includes the plural and conversely.
  - (ii) A gender includes all genders.
  - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (iv) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
  - (v) A reference to a clause, or Schedule is a reference to a clause of, or Schedule to, this Deed.
  - (vi) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.
  - (vii) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
  - (viii) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
  - (ix) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
  - (x) A reference to *dollars*, *A\$*, *AUD* or *\$* is to the lawful currency of Australia.
  - (xi) Words and phrases not specifically defined in this Deed have the same meanings (if any) given to them in the Corporations Act.
  - (xii) A reference to time is a reference to time in Sydney, Australia.
  - (xiii) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.

- (xiv) A reference to a *loss* incurred by any person includes any loss, liability, damage, cost, charge or expense that the person pays, incurs or is liable for and any other diminution of value of any description that the person suffers, including all liabilities on account of taxes or duties, all interest, penalties, fines and other amounts payable to third parties and all reasonable legal expenses and other expenses in connection with investigating or defending any claim, action, demand or proceeding, whether or not resulting in any liability, and all amounts paid in settlement of any such claims.

### 1.3 Several Obligations

- (a) Where this Deed imposes any obligation or liability on the BidCo Shareholders (including an obligation on the BidCo Shareholders to procure that BidCo undertakes a specified action) that obligation or liability is imposed on the BidCo Shareholders severally in their BidCo Respective Proportions, and no BidCo Shareholder will have any liability in respect of such obligation or liability beyond its BidCo Respective Proportion.
- (b) Where this Deed confers a right on the BidCo Shareholders, that right must be exercised by the BidCo Shareholders jointly.

### 1.4 BidCo to have the benefit of Deed

The Target acknowledges that its undertakings, acknowledgements, representations and warranties under this Deed are given for the benefit of, and may be relied upon, by BidCo (in addition to the BidCo Shareholders and Qube), notwithstanding that BidCo is not (or may not be) a party to this Deed.

### 1.5 Consents and approvals

If the doing of any act, matter or thing under this Deed is dependent on the consent or approval of a party or is within the discretion of a party, such consent or approval may be given or such discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion (unless this Deed expressly specifies otherwise).

## 2 The Bid

### 2.1 Offer by BidCo

- (a) The BidCo Shareholders must procure that:
  - (i) subject to clause 3.8, BidCo makes the Offer on terms and conditions that are not less favourable to Target Shareholders than the Agreed Bid Terms; and
  - (ii) without limiting this clause 2.1(a), publicly announce a proposal to make the Offer, in accordance with clause 8(a), promptly on the Announcement Date.
- (b) The Target represents and warrants that:
  - (i) the Target Board has met and considered the possibility of BidCo making the Bid; and
  - (ii) all of the Target Directors have informed the Target that, if the BidCo Shareholders comply with clause 2.1(a), they will:
    - (A) unanimously recommend that Target Shareholders accept the Offer to be made to them under the Bid; and
    - (B) accept, or procure the acceptance of, the Offer in respect of any Target Shares that they hold or have control over disposal of,

in each case in the absence of a Superior Proposal and subject to the Independent Expert opining that the Bid is fair and reasonable to Target Shareholders and the sale of the Ports Businesses and the BAPS Businesses is fair and reasonable to the holders of Target Shares whose votes are not to be disregarded.

## 2.2 Offer Consideration

- (a) If the Offer becomes unconditional, the Offer Consideration must be provided to holders of Acceptance Target Shares (or, in the case of a post-Offer compulsory acquisition, to the Target as trustee for holders of the Target Shares which are to be compulsorily acquired) as follows:
  - (i) the BidCo Shareholders must procure that BidCo pays the cash component (other than the Qube Cash Amount);
  - (ii) Qube must pay the Qube Cash Amount; and
  - (iii) Qube must issue the relevant Qube Shares,

subject to and in accordance with all applicable provisions of the Corporations Act and the terms of the Offer (including terms consistent with sections 619(3), 619(4) and 619(5) of the Corporations Act as notionally modified (in the case of section 619(3) and notionally inserted (in the case of sections 619(4) and 619(5)) by ASIC Class Order 13/521 which provide that, in the case of certain foreign or small parcel holders of Acceptance Target Shares, Qube Shares will be issued to a sale nominee rather than to those registered holders).
- (b) Qube must comply with the Qube Deed Poll. The Qube Deed Poll cannot be terminated or amended without the consent of all parties to this Deed, except for automatic termination of the Qube Deed Poll as provided in the Qube Deed Poll.

## 2.3 Reasonable endeavours regarding Conditions

Without prejudice to any other obligations of the parties under this Deed:

- (a) The Target must use its reasonable endeavours to satisfy, or procure the satisfaction of, the Conditions in paragraphs (h), (i), (j) and (n) of Schedule 1 as soon as practicable after the date of this Deed, to the extent that it is within its control.
- (b) Each party must, to the extent it is within their power to do so, use its reasonable endeavours to procure that the Conditions in paragraphs (a), (b), (c), (d), (e), (f), (g) and (m) of Schedule 1 are satisfied as soon as practicable after the date of this Deed (including, in the case of Qube and each BidCo Shareholder, by acting reasonably in considering the provision of undertakings or other concessions requested or required by the ACCC to facilitate ACCC clearance) and continue to be satisfied at all times until the last time that the relevant Condition provides that it is to be satisfied and there is no occurrence within its control or the control of any of its Related Corporations that would prevent any of the Conditions, which that party (alone or together with the other applicable party) must use reasonable endeavours to satisfy, being or remaining satisfied.
- (c) Without limiting anything else in this clause 2.3, the BidCo Shareholders, Qube and the Target must:
  - (i) promptly apply for all relevant Regulatory Approvals (as applicable);
  - (ii) take all steps it is responsible for as part of the Regulatory Approval process, including responding to any Governmental Agency in relation to the applications for the Regulatory Approvals at the earliest practicable time;

- (iii) promptly provide the others with all information reasonably requested by any Governmental Agency in connection with the applications for the Regulatory Approvals, including copies of all communications with any Governmental Agency in respect of obtaining the Regulatory Approvals;
- (iv) consult with the other parties in advance in relation to the progress of obtaining the Regulatory Approvals and provide the others with a draft copy of any submission or correspondence; and
- (v) provide the other parties or the relevant Governmental Agency with all assistance and information that it reasonably requests in connection with an application for a Regulatory Approval to be lodged by that other party,

provided that:

- (vi) no party is required to disclose materially Commercially Sensitive or Competitive Information to another party or information which would be damaging to the commercial or legal interests of the discloser or any of its Related Corporations, or information disclosure of which is not permitted by law; and
- (vii) the party applying for a Regulatory Approval is not prevented from taking any step (including communicating with a Government Agency) in respect of a Regulatory Approval if the other has not promptly responded under clause 2.3(c)(iv).

## 2.4 Variation of Offer

- (a) The Target acknowledges that BidCo may, subject to the Corporations Act, vary the terms and conditions of the Offer, provided that the varied terms and conditions are not less favourable to Target Shareholders than the Agreed Bid Terms.
- (b) The Target acknowledges that BidCo may, subject to the Corporations Act and clause 2.5, declare the Offer unconditional or extend the Offer Period at any time.

## 2.5 Waiver of Conditions

- (a) The Conditions in paragraphs (h), (k) and (m) of Schedule 1 are for the benefit of the BidCo Shareholders, Qube and the Target and may only be waived in accordance with applicable law and with the agreement in writing of the BidCo Shareholders, Qube and the Target. The Target must not unreasonably delay or withhold its agreement to waive the Condition in paragraph (k) of Schedule 1. The Target will consult with the BidCo Shareholders and Qube in good faith in connection with any proposal to waive the Condition in paragraph (k) of Schedule 1 and take into account all relevant matters including the existence of an acceptance facility, the number of Target Shares tendered into such facility and the likelihood that the conversion of acceptance instructions in that facility will result in BidCo and its Associates having a Relevant Interest in excess of 50.1% of all of the Target Shares on issue.
- (b) The Conditions in paragraphs (d), (e) and (f), of Schedule 1 are for the benefit of the BidCo Shareholders, Qube and the Target and may only be waived:
  - (i) with the agreement in writing of the BidCo Shareholders, Qube and the Target; or
  - (ii) in circumstances where:
    - (A) the Condition is not satisfied solely because any approval given by the ACCC is conditional (rather than unconditional); and

- (B) the BidCo Shareholders and Qube (as appropriate) have undertaken to the ACCC that they will comply with all such conditions,  
with the agreement in writing of the BidCo Shareholders and Qube.
- (c) All of the Conditions in Schedule 1 other than those referred to in clauses 2.5(a) and 2.5(b) are for the sole benefit of the BidCo Shareholders and Qube and may be only be waived by the BidCo Shareholders and Qube (in their absolute discretion) in writing.
- (d) If a party waives the breach or non-fulfilment of any of the Conditions, that waiver does not prevent it from suing another party for any breach of this Deed that resulted in the breach or non-fulfilment of the Condition.
- (e) Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
  - (i) a waiver of breach or non-satisfaction of any other Condition resulting from that same event; or
  - (ii) a waiver of breach or non-satisfaction of that Condition resulting from any other event.

## 2.6 Termination on Failure of Conditions

- (a) If any event occurs which would, or in fact does, prevent any of the Conditions (other than the Condition in paragraph (l) of Schedule 1) from being satisfied by the End Date, the BidCo Shareholders, Qube and the Target must:
  - (i) consult in good faith to consider and if agreed determine whether the transaction contemplated by the Transaction Documents may proceed by way of alternative means or methods; and
  - (ii) consider in good faith and, if agreed, extend the End Date.
- (b) If the BidCo Shareholders, Qube and the Target are unable to reach agreement under clause 2.6(a) within five Business Days or the End Date, whichever is the earlier, after becoming aware of the relevant occurrence, then unless that Condition is waived by the BidCo Shareholders and Qube, or the Target, as provided in clause 2.5, then the BidCo Shareholders and Qube (acting jointly), or the Target, may terminate this Deed without any liability to the other parties because of that termination, unless the relevant occurrence or the failure of the Condition to be satisfied, arises out of a breach by the terminating party of clause 2.3 or 2.7 (for the avoidance of doubt, in such circumstances, the party which is not the terminating party of this Deed may still terminate this Deed). For the avoidance of doubt, nothing in this clause 2.6(b) affects the obligation of the Target to pay the BidCo Shareholders and Qube the Break Fee, if it is required to do so under clause 13.
- (c) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination (including by virtue of clause 14.3), on termination of this Deed, no party shall have any rights against or obligations to any other party under this Deed except for those rights and obligations which accrued prior to termination.

## 2.7 Certain Notices

- (a) If the BidCo Shareholders, Qube or the Target become aware that any Condition has been satisfied, it must promptly notify each other party in writing of that fact.
- (b) If the BidCo Shareholders, Qube or the Target become aware of a breach or non-fulfilment of a Condition, or that an event has occurred that will or would be reasonably

likely to prevent a Condition from being satisfied, it must immediately notify each other party in writing of that fact.

- (c) The BidCo Shareholders, Qube and the Target (as the case may be) must promptly advise each other orally and in writing of any change or event causing, or which, so far as can reasonably be foreseen, would cause:
  - (i) a representation or warranty provided in this Deed by the relevant party to be false;
  - (ii) a breach or non-fulfilment of any of the Condition; or
  - (iii) a material breach of this Deed by the relevant party.

### **3 Documentation and Facilitation of Bid**

#### **3.1 Timetable**

Each party agrees to use reasonable endeavours to implement the Bid in accordance with the Bid Timetable.

#### **3.2 Bidder's Statement**

- (a) As soon as practicable after the date of this Deed, the BidCo Shareholders must prepare (and must procure that BidCo prepares):
  - (i) a Bidder's Statement for the Bid; and
  - (ii) an acceptance form or acceptance forms for the Bid.
- (b) The BidCo Shareholders must give the Target a reasonable opportunity to review:
  - (i) an advanced draft of the Bidder's Statement at least five Business Days before BidCo lodges that document with ASIC; and
  - (ii) any subsequent material amendments to that draft,

and will consult in good faith with the Target with respect to any comments from the Target and its Advisers on that draft or those amendments.

#### **3.3 Target's Statement**

- (a) As soon as practicable after the date of this Deed, the Target must prepare a Target's Statement in response to the Bid.
- (b) The parties acknowledge that the Target will commission the preparation of a Bid Independent Expert's Report for the Target's Statement.
- (c) The Target must give the BidCo Shareholders and Qube a reasonable opportunity to:
  - (i) review an advanced draft of the Target's Statement at least five Business Days before the Target lodges that document with ASIC;
  - (ii) undertake a factual accuracy review of an advanced draft of the Bid Independent Expert's Report at least five Business Days before the Target's Statement is lodged with ASIC; and
  - (iii) review or undertake factual accuracy review (as the case may be) of any subsequent material amendments to any of those drafts,

and will consult in good faith with the BidCo Shareholders and Qube with respect to any comments from the BidCo Shareholders, Qube and their Advisers on those drafts or those amendments.

### 3.4 Notice of Meeting

- (a) As soon as practicable after the date of this Deed, the Target must convene a general meeting of Target Shareholders for the purpose of seeking approval of the Shareholder Resolutions (the **General Meeting**).
- (b) In connection with the General Meeting, the Target must, as soon as practicable after the date of this Deed:
  - (i) prepare the notice of general meeting and explanatory memorandum (the **Notice of Meeting**) in accordance with applicable law and the ASX Listing Rules; and
  - (ii) commission the preparation of an independent expert's report in relation to the Shareholder Resolutions (the **NOM Independent Expert's Report**), which report will accompany the Notice of Meeting.
- (c) The Notice of Meeting must contain:
  - (i) the Shareholder Resolutions which, if passed by the requisite majorities of Target Shareholders, will mean that the Condition in paragraph (g) of Schedule 1 is satisfied;
  - (ii) subject to the BidCo Shareholders and Qube having provided to the Target the relevant information, a description of the Qube Promissory Notes referred to in Resolution 3 of the Shareholder Resolutions and the procedure by which a Target Shareholder can apply for such Qube Promissory Notes; and
  - (iii) a statement that the Target Board unanimously recommends that Target Shareholders vote in favour of the Shareholder Resolutions.
- (d) The Target must give the BidCo Shareholders and Qube a reasonable opportunity to:
  - (i) review an advanced draft of the Notice of Meeting at least five Business Days before the Target provides a draft to ASX for review;
  - (ii) undertake a factual accuracy review of an advanced draft of the NOM Independent Expert's Report at least five Business Days before a draft Notice of Meeting is provided to ASX for review; and
  - (iii) review or undertake factual accuracy review (as the case may be) of any subsequent material amendments to any of those drafts,

and will consult in good faith with the BidCo Shareholders and Qube with respect to any comments from the BidCo Shareholders, Qube and their respective Advisers on those drafts or those amendments.
- (e) As soon as practicable after the date of this Deed, Qube must:
  - (i) prepare and lodge with ASIC a prospectus and application form in relation to the Qube Promissory Notes which complies with the Corporations Act so that those documents are available to be given to any Target Shareholder who requests them after despatch of the Notice of Meeting; and
  - (ii) otherwise comply with the Corporations Act, including Chapter 2L, in respect of the Qube Promissory Notes,

except to the extent that Qube has obtained ASIC relief or modifications.

### 3.5 Co-operation by parties in relation to documentation



- (a) The Target must provide all information and all relevant assistance reasonably required by the BidCo Shareholders and BidCo in connection with the preparation and verification of the Bidder's Statement and the Offer generally.
- (b) The BidCo Shareholders and Qube must provide all information and all relevant assistance reasonably required by the Target in connection with the preparation and verification of the Target's Statement, the Bid Independent Expert's Report, the Notice of Meeting and the NOM Independent Expert's Report.
- (c) As soon as reasonably practicable after the date of this Deed, the Target must apply for a ruling or rulings from the ATO on the tax consequences of any dividend or return of capital contemplated by the Shareholder Resolutions (each an **ATO Ruling**). The BidCo Shareholders must provide all information and all relevant assistance reasonably required by the Target in relation to each application for an ATO Ruling. The Target must consult with the BidCo Shareholders, and keep them informed on a timely basis, in relation to each application for an ATO Ruling and any dealings with the ATO in relation to each application for an ATO Ruling. The BidCo Shareholders shall have the right to modify or otherwise amend each application for an ATO Ruling to correct any factual errors contained in each such application.

### 3.6 Despatch of documentation

- (a) The Target agrees, and represents and warrants that all of the Target Directors have agreed, for the purpose of item 6 of section 633(1) of the Corporations Act, that the Offer and accompanying documents to be sent by BidCo to Target Shareholders in respect of the Bid (including the Bidder's Statement and acceptance form or forms) may be sent on a date nominated by the BidCo Shareholders or BidCo that is earlier than the date prescribed by item 6 of section 633(1) of the Corporations Act.
- (b) At the request of the BidCo Shareholders or BidCo, the Target must use all reasonable endeavours to ensure that the Bidder's Statement and the Target's Statement are dispatched in the same mail-out to Target Shareholders.

### 3.7 Provision of register information

In addition to the Target's obligations under the Corporations Act, during the period from the date of this Deed to the end of the Offer Period, the Target must provide all necessary information, or have the share registry of the Target provide all necessary information, to the BidCo Shareholders about Target Shareholders (including the results of directions by the Target to Target Shareholders under Part 6C.2 of the Corporations Act), in each case in a form reasonably requested by the BidCo Shareholders and at least on a fortnightly basis, which the BidCo Shareholders reasonably require in order to send the Offer and accompanying documents to solicit acceptances of the Offer by, or discuss the Bid with, Target Shareholders or to facilitate the provision by BidCo of the consideration under the Bid.

### 3.8 Failure to satisfy minimum bid price condition

- (a) If it becomes impossible for the Bid Condition in paragraph (I) of Schedule 1 to be satisfied in respect of a proposed Offer, the BidCo Shareholders must procure BidCo to make an Offer on Agreed Bid Terms on the earlier of:
  - (i) the date on which the parties believe, on reasonable grounds, that the Bid Condition in paragraph (I) of Schedule 1 will be satisfied in respect of an Offer; and



- (ii) the date that is 4 clear months after the most recent date on which BidCo Shareholder or Qube or any of their respective Associates made a purchase of Target Shares for cash (the **Four Month Date**),  
(the **Repeat Offer**).
- (b) This Deed will apply to the Repeat Offer as if it was the Offer and, to avoid doubt, if it becomes impossible for the Bid Condition in paragraph (I) of Schedule 1 to be satisfied in respect of the Repeat Offer, clause 3.8(a) will apply to the Repeat Offer.
- (c) Any Offer or Repeat Offer made on or after the Four Month Date will not include the Bid Condition in paragraph (I) of Schedule 1.

### 3.9 Offer extension

If the Offer becomes free from all of the Bid Conditions, the BidCo Shareholders will procure BidCo to extend the end date of the Offer to a date that is at least two weeks from the date that a notice is given to the ASX of that circumstance.

### 3.10 Alternative scheme of arrangement

If circumstances change such that the BidCo Shareholders and Qube reasonably form the view that BidCo's proposed acquisition of Target Shares at the Offer Consideration and on terms not less favourable to Target Shareholders than the Offer Terms can occur under a scheme of arrangement under Part 5.1 of the Corporations Act, the Target must upon the BidCo Shareholders' and Qube's joint request consider in good faith whether to amend this Deed to facilitate such a scheme and do such other things that are necessary in order for that scheme to be proposed and implemented.

## 4 Conduct of Business and Other Obligations

### 4.1 Conduct of the Target Group business

- (a) During the period from the date of this Deed up to and including the date of Completion, the Target must:
  - (i) conduct its businesses and operations, and cause each other Target Group Member to conduct its respective businesses and operations, 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 12 months prior to the date of this Deed;
  - (ii) keep the BidCo Shareholders, Qube and BidCo informed of the conduct of the Target Group's businesses including in relation to the status and positions of parties in negotiations on key enterprise agreements;
  - (iii) provide regular reports to the BidCo Shareholders, Qube and BidCo on the financial affairs of the Target Group, in a timely manner;
  - (iv) comply with its obligations under the Ports Sale Agreement and BAPS Sale Agreement, in particular clauses 4.2 and 4.3 of the Ports Sale Agreement;
  - (v) use all reasonable endeavours, and procure that each other Target Group Member makes all reasonable endeavours to:
    - (A) preserve intact the value of the respective businesses and assets;
    - (B) keep available the services of the current Officers; and
    - (C) maintain and preserve their relationships with Governmental Agencies, ratings agencies, customers, suppliers, licensors, licensees and others

having business dealings with any Target Group Member (including using reasonable endeavours to obtain consents from third parties to any change of control provisions in contracts and in any other contracts or arrangements to which a Target Group Member is a party and which the BidCo Shareholders or Qube reasonably request); and

- (vi) use all reasonable endeavours to ensure that the Target is not removed from the official list of ASX and not to request for removal from the official list unless requested to do so by BidCo or the BidCo Shareholders.
- (b) From the date of this Deed up to and including the date of Completion, the Target must ensure that no Target Prescribed Occurrence and no Target Regulated Event occurs.
- (c) Nothing in clause 4.1(a) restricts the ability of the Target to take any action:
  - (i) which has been agreed to in writing by the BidCo Shareholders and Qube;
  - (ii) which is required by any Transaction Document; or
  - (iii) which is Fairly Disclosed in the Disclosure Materials of the Target as being an action that the Target will carry out between (and including) the date of this Deed and the date of Completion.
- (d) Nothing in clause 4.1(a) requires the Target to provide any Commercially Sensitive or Competitive Information to Qube, but this is subject to clause 4.6.
- (e) For the avoidance of doubt, nothing in clause 4.1(a) restricts the ability of the Target to:
  - (i) respond to a Competing Proposal to the extent permitted in accordance with clause 12; or
  - (ii) pay the Target Permitted Dividends.
- (f) From the date of this Deed up to and including the date of Completion, unless the BidCo Shareholders and Qube agree in writing, the Target will promptly notify the BidCo Shareholders and Qube of anything of which the Target becomes aware that:
  - (i) makes any material information publicly filed by it (either on its own account in respect of any other Target Group Member) to be, or reasonably likely to be, incomplete, incorrect, untrue or misleading in any material respect;
  - (ii) makes any of the representations and warranties given by the Target under this Deed false, inaccurate, misleading or deceptive in any material respect; or
  - (iii) may, or may with time, constitute a Target Material Adverse Change, Target Regulated Event or Target Prescribed Occurrence.

#### **4.2 Ports Sale Agreement and BAPS Sale Agreement**

- (a) The parties must:
  - (i) perform their obligations under the Ports Sale Agreement and BAPS Sale Agreement as and when those contracts require; and
  - (ii) use reasonable endeavours to ensure that the conditions to completion under the Ports Sale Agreement and BAPS Sale Agreement are satisfied on the same day and that completion under those agreements occurs at the same time.
- (b) With effect from completion under the Ports Sale Agreement and BAPS Sale Agreement, Qube ceases to have any rights under this Deed and releases the Target from all claims and liabilities under this Deed.

### 4.3 Restructure of Target Group

The Target must take such reasonable steps to ensure that a restructure of the Target Group in accordance with the reasonable requirements of the BidCo Shareholders can be completed as soon as practicable after each of the Conditions in Schedule 1 have been satisfied or waived to facilitate completion under the Ports Sale Agreement and BAPS Sale Agreement, including to ensure that:

- (a) an Australian-incorporated company that is a Wholly-Owned Subsidiary of the Target is or remains the holding company of the Ports Businesses (**PortCo**), the objective being that all of the issued shares of PortCo will be transferred to the purchaser under the Ports Sale Agreement;
- (b) all of the Ports Businesses are owned by PortCo or a Wholly-Owned Subsidiary of PortCo;
- (c) PortCo does not have any ownership interest in any assets of the Target Group other than the Ports Businesses;
- (d) none of PortCo or its Subsidiaries are subject to any liabilities other than to the extent they relate to the Ports Businesses;
- (e) an Australian-incorporated company that is a Wholly-Owned Subsidiary of the Target is or remains the holding company of the BAPS Businesses (**BAPSCo**), the objective being that all of the issued shares of BAPSCo will be transferred to the purchaser under the BAPS Sale Agreement;
- (f) all of the BAPS Businesses are owned by BAPSCo or a Wholly-Owned Subsidiary of BAPSCo;
- (g) BAPSCo does not have any ownership interest in any assets of the Target Group other than the BAPS Businesses; and
- (h) none of BAPSCo or its Subsidiaries are subject to any liabilities other than to the extent they relate to the BAPS Businesses.

### 4.4 Conduct of the Qube Group business

- (a) During the period from the date of this Deed up to and including the date of Completion, Qube must:
  - (i) conduct its businesses and operations, and cause each other Qube Group Member to conduct its respective businesses and operations, 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 12 months prior to the date of this Deed;
  - (ii) keep the Target, BidCo Shareholders and BidCo informed of the conduct of the Qube Group's businesses;
  - (iii) provide regular reports to the Target, BidCo Shareholders and BidCo on the financial affairs of the Qube Group, in a timely manner; and
  - (iv) use all reasonable endeavours, and procure that each other Qube Group Member makes all reasonable endeavours to preserve intact the value of the respective businesses and assets, to keep available the services of the current Officers, and to maintain and preserve their relationships with Governmental Agencies, ratings agencies, customers, suppliers, licensors, licensees and others having business dealings with any Qube Group Member (including using reasonable endeavours to obtain consents from third parties to any change of

control provisions in contracts and in any other contracts or arrangements to which a member of the Qube Group is a party and which the Target or the BidCo Shareholders reasonably request).

- (b) From the date of this Deed up to and including the date of Completion, Qube must ensure that no Qube Prescribed Occurrence Occurs.
- (c) Nothing in clause 4.4(a) restricts the ability of Qube to take any action:
  - (i) which has been agreed to in writing by the Target and the BidCo Shareholders;
  - (ii) which is required by any Transaction Document;
  - (iii) which is, or for the purposes of, a Permitted Qube Securities Issue; or
  - (iv) which is Fairly Disclosed in the Disclosure Materials of Qube as being an action that Qube will carry out between (and including) the date of this Deed and the date of Completion.
- (d) Nothing in clause 4.4(a) requires Qube to provide any Commercially Sensitive or Competitive Information, but this is subject to clause 4.6.
- (e) From the date of this Deed up to and including the date of Completion, unless the Target agrees in writing, Qube will promptly notify the Target and the BidCo Shareholders of anything of which it becomes aware that:
  - (i) makes any material information publicly filed by Qube (or any other member of the Qube Group) to be, or reasonably likely to be, incomplete, incorrect, untrue or misleading in any material respect;
  - (ii) makes any of the representations and warranties given by Qube under this Deed false, inaccurate, misleading or deceptive in any material respect; or
  - (iii) may, or may with time, constitute a Qube Material Adverse Change or a Qube Prescribed Occurrence.

#### **4.5 Access to information and co-operation**

- (a) During the period from the date of this Deed up to and including the date of Completion, each BidCo Shareholder, Qube and the Target must, and must procure each of its respective Related Corporations to, afford to each other and their respective Representatives reasonable access to information of BidCo, any Qube Member and any Target Group Member (as applicable) and give reasonable access to their respective senior officers (including, in the case of the Target, the Independent Expert) and records as reasonably requested by a party, and otherwise provide reasonable co-operation to each other (including, in the case of clause 4.5(a)(iii), access to the Target Group's auditors and accountants), in each case for the purposes of:
  - (i) the implementation of the Bid;
  - (ii) the other party or parties gaining an understanding of the operations of the Target's businesses in order to allow and facilitate the development and the implementation of the plans of BidCo, the BidCo Shareholders or Qube for those businesses following the implementation of the Bid or completion of the Ports Sale Agreement or BAPS Sale Agreement;
  - (iii) preparation of the financial statements for inclusion in the Bidder's Statement (and any updates);
  - (iv) compliance with legally binding reporting obligations to holders of their shares, interests or other securities, or to financiers or other investors, or to satisfy their

compliance obligations under any applicable legal, governmental, taxation or regulatory rules, or otherwise imposed by an Governmental Agency, or as reasonably required in connection with:

- (A) any financing transaction or arrangement; or
- (B) arranging or syndicating any acquisition, debt or equity financing, and all timely cooperation in connection with the arrangement; and
- (v) any other purpose that is agreed in writing between the parties,

provided that:

- (vi) the parties will focus on material issues, having regard to management commitments and the impact of information requests on the other party's business and, in relation to the BidCo Shareholders, be limited to representatives directly involved in the Bid;
  - (vii) such requests by a party do not result in unreasonable disruptions to the other party's business, or require a party or its Related Corporations to make further disclosure to any other entity or Governmental Agency or require the disclosure of any document that would compromise the party's or any of its Related Corporations' legal professional privilege;
  - (viii) each party's obligations under this clause 4.5 are subject to any existing confidentiality obligations owed to third parties, appropriate consents in relation to which the relevant party must use all reasonable endeavours to obtain;
  - (ix) nothing in this clause 4.5 will require the Target to provide information concerning its directors' and management's consideration of the Bid or any Competing Proposal (but this proviso does not limit the Target's obligations under clause 12);
  - (x) nothing in this clause 4.5 will require any BidCo Shareholder or Qube to provide information concerning the formulation or consideration of the Bid or the transactions contemplated by the Transaction Documents or any variation to any of those;
  - (xi) nothing in this clause 4.5 will require any BidCo Shareholder or Qube to provide any Commercially Sensitive or Competitive Information to any other party, but this is subject to clause 4.6;
  - (xii) nothing in this clause 4.5 will require the Target to provide any Commercially Sensitive or Competitive Information to Qube, but this is subject to clause 4.6; and
  - (xiii) a party may provide to another party its records at a place other than the party's business premises.
- (b) Without limiting clause 4.5(a), the Target agrees to provide timely cooperation in connection with the on-sale of some or all of the BAPS Businesses, the arrangement or syndication of any acquisition, debt or equity financings by BidCo, any BidCo Shareholder or Qube as may be reasonably requested by BidCo and/or a BidCo Shareholder and/or Qube at any time and from time to time, including:
- (i) participating in meetings (including meetings with ratings agencies), drafting sessions and due diligence sessions;
  - (ii) furnishing BidCo and/or the BidCo Shareholder and/or Qube and their respective financing sources within a reasonable timeframe (including providing any consent required under the Confidentiality Agreement to such disclosure) with financial

and other pertinent information regarding the Target, the Target Group or any other entity in which any Target Group Member has an investment as may be reasonably requested by BidCo and/or the BidCo Shareholder and/or Qube and their respective financing sources in the preparation of any offering document to be used in obtaining or syndicating any acquisition, debt or equity financing, and any materials required in connection with ratings agency presentations;

- (iii) cooperating with any marketing efforts undertaken by BidCo and/or the BidCo Shareholder and/or Qube and their respective financing sources related to acquisition, debt or equity financings (including by making available such senior executives of the Target as reasonably requested by BidCo and/or the BidCo Shareholder and/or Qube at mutually convenient times for conference calls, management presentation sessions, roadshows, sales force presentations and similar meetings or presentations);
- (iv) assisting BidCo and/ or a BidCo Shareholder and/or Qube to satisfy any conditions and obligations of any financing to the extent same is within the Target's control; and
- (v) providing any information required to complete a reconciliation of financial statements to applicable accounting standards,

provided, in each case, that:

- (vi) where the Target has acted in good faith, neither the Target nor any Target Group Member shall be required to incur any liability in connection with any acquisition, debt or equity financing prior to implementation of the Bid that is not reimbursable by BidCo and/or the BidCo Shareholders and/or Qube;
- (vii) the BidCo Shareholders and Qube must severally in their Consortium Respective Proportions indemnify and hold harmless the Target Group Members and their respective Representatives from and against any and all losses, damages, claims, costs or expenses suffered or incurred by any of them in connection with any acquisition, debt or equity financing and any information utilised in connection therewith, in each case other than to the extent any of the foregoing arises from the bad faith or wilful misconduct of, or breach of this Deed by, the Target or a Target Group Member or their respective Representatives;
- (viii) in addition to any limitation expressed in clause 4.5(a) to apply to all of this clause 4.5, nothing in this clause 4.5(b), shall require cooperation to the extent that it would:
  - (A) cause any Condition to not be satisfied or otherwise cause a breach of this Deed; or
  - (B) require a Target Group Member to take any action that would reasonably be expected to conflict with or violate the Target Group Member constituent documents or any law; or
  - (C) require the approval of shareholders of the Target under section 260B of the Corporations Act or equivalent or analogous restriction in any jurisdiction; and
- (ix) none of the Target Group Members shall be required to execute prior to the close of the Offer Period, any agreements, including any credit or other agreements, pledge or security documents, or other certificates, legal opinions or documents in connection with the debt financing.

#### **4.6 Commercially sensitive or competitive information**

- (a) Each of clauses 4.1(d), 4.4(d), 4.5(a)(xi), 4.5(a)(xii) and 12.6 is subject to clause 4.6(b).
- (b) Where any Commercially Sensitive or Competitive Information forms only part of a relevant document that would otherwise be required to be provided under this Deed, the remainder of the document will be provided to the requesting party with the Commercially Sensitive or Competitive Information redacted.

### **5 Appointment of Directors**

#### **5.1 Appointment of Directors to Target Board**

As soon as practicable on the day on which the Condition in paragraph (k) of Schedule 1 is satisfied (or, if such Condition has been waived, BidCo (together with its Associates) has Relevant Interests in at least 50.1% of the Target Shares) and BidCo declares the Offer unconditional or the Offer becomes unconditional, the Target must:

- (a) take all action necessary to procure that each Target Director designated by the BidCo Shareholders in writing, and each director of any other Target Group Member designated by the BidCo Shareholders or BidCo in writing, resigns their office and unconditionally and irrevocably releases the Target Group Members from whose boards each such individual has resigned from any claims they may have against any such Target Group Member (without limitation to any accrued rights they may have under any deed of access and indemnity or policy of directors and officers insurance); and
- (b) cause the appointment to the Target Board and to the boards of each Target Group Member of such persons as nominated by the BidCo Shareholders or BidCo, subject to those persons having provided a consent to act as directors of the relevant company or companies,

provided that the BidCo Shareholders agree that a minimum of two existing directors on the Target Board (selected by the BidCo Shareholders) will remain on the Target Board until at least the end of the Offer Period.

#### **5.2 Deeds of indemnity and insurance**

- (a) Subject to Completion, the BidCo Shareholders undertake in favour of the Target and each other person who is a Target Indemnified Party that it will:
  - (i) subject to clause 5.2(e) and to the extent permitted by law, for a period of 7 years from Completion, ensure that the constitutions of the Target and each other Target Group Member (other than PortCo or a Subsidiary of PortCo) continue to contain such rules as are contained in those constitutions as at 7 February 2016 that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company (and the Target undertakes not to vary, and must ensure there is no variation of, those constitutional arrangements); and
  - (ii) procure that the Target and each other Target Group Member (other than PortCo or a Subsidiary of PortCo) complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers as at 7 February 2016 (and the Target undertakes not to vary, and must ensure there is no variation of, those arrangements, except that it may enter into such deeds with newly appointed directors and officers on terms materially consistent with existing deeds as at 7 February 2016) and, without limiting the foregoing, not take any



action which would prejudice or adversely affect any directors' and officers' runoff insurance cover taken out prior to Completion.

- (b) Subject to Completion, Qube undertakes in favour of the Target and each other person who is a Target Indemnified Party that it will:
  - (i) subject to clause 5.2(f) and to the extent permitted by law, for a period of 7 years from Completion, ensure that the constitutions of PortCo and each of its Subsidiaries continue to contain such rules as are contained in those constitutions as at 7 February 2016 that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company (and the Target undertakes not to vary, and must ensure there is no variation of, those constitutional arrangements); and
  - (ii) procure that PortCo and each of its Subsidiaries complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers as at 7 February 2016 (and the Target undertakes not to vary, and must ensure there is no variation of, those arrangements, except that it may enter into such deeds with newly appointed directors and officers on terms materially consistent with existing deeds as at 7 February 2016) and, without limiting the foregoing, not take any action which would prejudice or adversely affect any directors' and officers' runoff insurance cover taken out prior to Completion.
- (c) The undertakings contained in this clause 5.2 are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.
- (d) The Target receives and holds the benefit of this clause 5.2 to the extent it relates to the other Target Indemnified Parties, as trustee for them.
- (e) The undertakings contained in clause 5.2(a) are given until the earlier of the end of the relevant period specified in clause 5.2(a) or the relevant Target Group Member ceasing to be a Subsidiary of BidCo.
- (f) The undertakings in clause 5.2(b) are given until the earlier of the end of the relevant period specified in clause 5.2(b) or the applicable entity in the PortCo group (which comprises PortCo and its Subsidiaries) ceasing to be a Subsidiary of Qube.
- (g) The BidCo Shareholders and Qube acknowledge that, notwithstanding any other provision of this Deed, the Target may, prior to the date of Completion, enter into a run-off insurance policy in respect of any Target Indemnified Party for a 7 year period (or longer if the BidCo Shareholders and Qube agree, acting reasonably), and that any actions to facilitate that insurance or in connection therewith will not be a Target Prescribed Occurrence, Target Regulated Event or breach any provision of this Deed, provided that the Target has not acted unreasonably and has consulted with the BidCo Shareholders and Qube (who must act reasonably and not so as to cause delay) in entering into any such policy.

## 6 Target Rights and Target Permitted Dividends

### 6.1 Target Rights

The Target must take all actions necessary to ensure that:



- (a) no more than the number of Target Rights that are outstanding at 7 February 2016 (as set out in Schedule 3), or which are otherwise issued after the date of the Deed consistently with the exceptions to limb (m) of the Target Prescribed Occurrence, vest and/or have any restrictions on their exercise waived; and
- (b) any Target Rights that do not vest lapse or are cancelled upon or prior to Completion.

## 6.2 Target Permitted Dividends

- (a) Subject to clauses 6.2(b) and 6.2(c), the Target may, in its sole discretion, pay Target Shareholders who are recorded in the Target Register as a holder of Target Shares at a Target Permitted Special Dividend Record Date a Target Permitted Special Dividend (which shall be fully franked) on the Target Permitted Special Dividend Payment Date. The amount per Target Share of the Target Permitted Special Dividend together with each other Target Permitted Dividend shall not exceed such amount as can be fully franked utilising the franking account balance but ensuring that it is not reasonably anticipated to be in deficit on Completion. The aggregate amount of the Target Permitted Dividends must not exceed A\$0.97 per Target Share.
- (b) The BidCo Shareholders must procure that BidCo notifies the Target in writing at least 10 Business Days before BidCo intends to free the Offer from the last of the Conditions that remain outstanding (**Final Conditions**) such that the Offer becomes unconditional (**Notice Date**).
- (c) The BidCo Shareholders agree to procure that BidCo:
  - (i) will not free the Offer from the Condition in paragraph (i) of Schedule 1 before the date which is 10 Business Days after the Notice Date; and
  - (ii) will free the Offer from the Final Conditions such that the Offer becomes unconditional on the date which is 11 Business Days after the Notice Date,
 provided that this clause 6.2 will cease to apply if there is a breach of any Final Condition after the Notice Date and prior to the Offer being freed of the relevant Condition and such breach is not waived by BidCo and Qube (in their absolute discretion).
- (d) The parties agree to consult and cooperate with each other in respect of the timing and mechanics associated with each Target Permitted Special Dividend with a view to ensuring that the dividend can be fully franked.

## 7 Target Board Recommendations and Intentions

### 7.1 Target Board recommendation

- (a) The Target Agreed Announcement must state (on the basis of written statements or resolutions made by each of the Target Directors) that the Target Board unanimously recommends the Bid to Target Shareholders and that Target Shareholders accept the Offer in respect of all of their Target Shares, in the absence of a Superior Proposal and subject to the Independent Expert opining that the Bid is fair and reasonable to Target Shareholders and the sale of the Ports Businesses and the BAPS Businesses is fair and reasonable to the holders of Target Shares whose votes are not to be disregarded.
- (b) The Target must use its best endeavours to procure that:
  - (i) the Target Board does not change or withdraw its recommendation set out in the Target Agreed Announcement;
  - (ii) the Target's Statement states that the Target Board unanimously recommends the Bid to Target Shareholders and that Target Shareholders accept the Offer in

respect of all of their Target Shares, and does not change or withdraw those recommendations once made; and

- (iii) the Target Board does not make any public statement that the Bid is no longer so considered or recommended,

unless:

- (iv) the Independent Expert fails to opine that the Bid is fair and reasonable to Target Shareholders and the sale of the Ports Businesses and the BAPS Businesses is fair and reasonable to the holders of Target Shares whose votes are not to be disregarded (including in either the Bid Independent Expert's Reports contained in the Target's Statement or any update, addendum or variation to it); or
- (v) the Target has received, other than as a result of a breach of this Deed, a Superior Proposal,

and the Target has complied with clause 13.

- (c) For the purposes of this clause 7.1, customary qualifications and explanations contained in the Target's Statement in relation to a recommendation to accept the Bid to the effect that the recommendation is made in the absence of a Superior Proposal from a third party will not be regarded as a failure to make or withdraw the making of a recommendation to accept the Bid.

## 7.2 Target Director intentions

- (a) The Target Agreed Announcement must state (on the basis of written statements or resolutions made by the relevant Target Directors) that each Target Director who holds Target Shares, or who has control over disposal of Target Shares, intends to accept (or procure the acceptance of, as the case may be) the Offer in respect of all such Target Shares, in the absence of a Superior Proposal and subject to the Independent Expert opining that the Bid is fair and reasonable to Target Shareholders and the sale of the Ports Businesses and the BAPS Businesses is fair and reasonable to the holders of Target Shares whose votes are not to be disregarded.
- (b) The Target must use its best endeavours to procure that:
  - (i) each Target Director who holds Target Shares, or who has control over disposal of Target Shares, does not change or withdraw their intention regarding acceptance of the Offer in respect of all those Target Shares set out in the Target Agreed Announcement; and
  - (ii) the Target's Statement includes a statement that each Target Director who holds, or controls the disposal of, Target Shares intends to accept (or to procure the acceptance of, as the case may be) the Offer in respect of all of those Target Shares,

unless:

- (iii) the Independent Expert fails to opine that the Bid is fair and reasonable to Target Shareholders and the sale of the Ports Businesses and the BAPS Businesses is fair and reasonable to the holders of Target Shares whose votes are not to be disregarded (including in either the Bid Independent Expert's Reports contained in the Target's Statement or any update, addendum or variation to it); or
- (iv) the Target has received, other than as a result of a breach of this Deed, a Superior Proposal,

and the Target has complied with its obligations under clause 13.

### 7.3 Support for the Takeover Bid

During the Offer Period, in the absence of a Superior Proposal and subject to the Independent Expert opining that the Bid is fair and reasonable to Target Shareholders and the sale of the Ports Businesses and the BAPS Businesses is fair and reasonable to the holders of Target Shares whose votes are not to be disregarded, the Target Board will support the Takeover Bid and ensure that Target Group officers and management participate in efforts reasonably required by the BidCo Shareholders and/or BidCo and/or Qube to promote the merits of the Takeover Bid, including meeting with key Target Shareholders, analysts, management, customers and press if requested to do so by the BidCo Shareholders and/or BidCo and/or Qube.

### 7.4 Change in recommendation

Without limiting the operation of clause 13 or the provisions of this clause 7, if circumstances arise (including the receipt or expected receipt of unfavourable reports from the Independent Expert) which may lead to any one or more Target Board members changing or withdrawing their recommendation to vote in favour of the Bid or either of them (other than such circumstances as provided for in clause 12.3 or 12.4 which shall be regulated by those clauses), the Target must:

- (a) promptly notify the BidCo Shareholders and Qube of this fact; and
- (b) consult with the BidCo Shareholders and Qube in good faith to determine whether there are any steps that can be taken to avoid such a change or withdrawal (as applicable).

## 8 Public Announcements

- (a) On the Announcement Date, the BidCo Shareholders must procure that BidCo publicly releases the BidCo Agreed Announcement and the Target must lodge the Target Agreed Announcement with ASX. The BidCo Shareholders and the Target must use their best endeavours to co-ordinate the release of those public announcements.
- (b) Where a party is required by applicable law, or the ASX Listing Rules or any other applicable stock exchange regulation to make any announcement or to make any disclosure in connection with this Deed (including its termination), the Bid or any other transaction contemplated by a Transaction Document, it may do so only after it has given the other parties as much notice as is reasonably practicable in the context of any deadlines imposed by law or the applicable requirement, but in any event prior notice, and has consulted with the other parties as to (and has given the other parties a reasonable opportunity to comment on) the form and content of that announcement or disclosure and taken all reasonable steps to restrict that disclosure to the greatest extent possible. Nothing in this clause 8 requires the giving of prior notice or the taking of any action if doing so would lead to a party breaching an applicable law, or the ASX Listing Rules or any other applicable stock exchange regulation.
- (c) Except as otherwise permitted under this Deed, no public announcement or public disclosure of the Bid or any other transaction the subject of this Deed may be made other than in a form approved by each party in writing (acting reasonably), but each party must use all reasonable endeavours to provide such approval as soon as practicable.
- (d) Qube is not required to comply with clauses 8(b) and 8(c) in respect of public announcements relating solely or principally to any equity or debt funding arrangements to which Qube is or becomes a party in connection with the transactions contemplated by the Transaction Documents or the Bid where such public announcements constitute any ASX Appendix 3B or any statements provided pursuant to section 708AA or 708A of the Corporations Act.

## 9 Confidentiality

Each BidCo Shareholder, Qube and the Target acknowledges and agrees that:

- (a) after the date of this Deed they continue to be bound by the Confidentiality Agreement;
- (b) the rights and obligations of the parties under the Confidentiality Agreement survive termination of this Deed; and
- (c) notwithstanding any other provision of this Deed, any requirement of any party to provide information to any of BidCo Shareholder, Qube or the Target in accordance with any provision of this Deed, must be read subject to (including to the extent that this results in reading down any obligation in this Deed to provide such information), and any information so provided must be dealt with in accordance with, any information handling protocols agreed between the parties under or connection with the provision of information under the Confidentiality Agreement prior to the date of the Deed.

## 10 Representations and Warranties

### 10.1 Target representations and warranties

The Target represents and warrants to each of the BidCo Shareholders (in its own right and separately as trustee or nominee for each other Bidder Indemnified Party) and to Qube (in its own rights and separately as trustee or nominee for each other Qube Indemnified Party) that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed;
- (c) it has taken all necessary corporate action to authorise the entry into this Deed and has taken or will take all necessary corporate action to authorise the performance of this Deed;
- (d) this Deed is a valid and binding obligation enforceable against it in accordance with its terms; and
- (e) the execution and performance by it of this Deed and each transaction contemplated by this Deed did not and will not violate in any respect a provision of:
  - (i) a law, judgment, ruling, order or decree binding on it or any of its Subsidiaries; or
  - (ii) its constitution (as applicable),

and other than as Fairly Disclosed in the Disclosure Letter, it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this Deed.
- (f) all information provided by the Target to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Bid Independent Expert's Report and the NOM Independent Expert's Report;
- (g) it will, as a continuing obligation, ensure that the Target's Statement is updated (or, if the parties agree, the market is otherwise informed by way of announcement) to include all further or new information with arises after the Target's Statement has been dispatched to Target Shareholders until the close of the Offer Period, which is necessary to ensure that the Target's Statement is not misleading or deceptive (including by way of omission);
- (h) no Insolvency Event has occurred in relation to it or another Target Group Member, nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict its ability to fulfil its obligations under this Deed;

- (i) each Target Group Member has complied in all material respects with all Australian and foreign laws and regulations applicable to it and orders of Australian and foreign Governmental Agencies having jurisdiction over it, and is not aware of any material breach of law by any Target Group Member, and the Target Group has all material licences, authorisations and permits necessary for it to conduct the business of the Target Group as presently being conducted;
- (j) following the making by the Target of the Target Agreed Announcement, the Target has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1 and it is not relying on the carve out in ASX Listing Rule 3.1A to withhold any material information from public disclosure;
- (k) as a continuing obligation, its capital structure, including all issued securities as at 7 February 2016, is as set out in Schedule 3 and Schedule 4 and no Target Group Member has issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into Target Shares other than as set out in Schedule 4 and it is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any Target Shares, options, warrants, performance rights or other securities or instruments in the Target other than as Fairly Disclosed in its Disclosure Letter or this Deed or otherwise as required by this Deed;
- (l) any company, partnership, trust, joint venture or other enterprise in which the Target or another Target Group Member owns, or has a material interest in, is as notified in writing by the Target to the BidCo Shareholders and Qube prior to entry into this Deed;
- (m) it is not aware of any information relating to the Target Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this Deed that has or could reasonably be expected to give rise to a Target Material Adverse Change that has not been publicly disclosed in a document, schedule, report of form furnished or filed with ASX or ASIC (which in each case is publicly available) or in the Target's Disclosure Materials;
- (n) it has provided fee estimates, which have been prepared in good faith and have a reasonable basis, for its advisors in relation to any Competing Proposals which such retainer or mandate is current, or under which the Target Group still has obligations;
- (o) all information it has provided to the Independent Expert or to the BidCo Shareholders or Qube, is accurate and not misleading in a material respect, and it has not omitted any information required to make the information provided to the Independent Expert or the BidCo Shareholders or Qube not misleading in a material respect; and
- (p) it has collated and prepared all of its Disclosure Materials in good faith in response to particular written requests for information from the BidCo Shareholders or Qube or their respective Representatives for the purposes of a due diligence process and in this context, as far as the Target is aware, its Disclosure Materials have been collated with all reasonable care and skill.

## 10.2 Target's indemnity

The Target agrees with each BidCo Shareholder and Qube (each in their own right and separately as trustee or nominee for each other Bidder Indemnified Party or other Qube Indemnified Party (as applicable)) to indemnify each Bidder Indemnified Party and Qube Indemnified Party (as applicable) from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that the Bidder Indemnified Party or Qube

Indemnified Party (as applicable) suffers, incurs or is liable for arising out of any breach of any of the Target's representations and warranties in this Deed.

### 10.3 Qube representations and warranties

Qube represents and warrants to the Target (in its own right and separately as trustee or nominee for each other Target Indemnified Party) and the BidCo Shareholders (each in their own right and separately as trustee or nominee for each other Bidder Indemnified Party) that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed;
- (c) it has taken all necessary corporate action to authorise the entry into this Deed and has taken or will take all necessary corporate action to authorise the performance of this Deed;
- (d) this Deed is a valid and binding obligation enforceable against it in accordance with its terms; and
- (e) the execution and performance by it of this Deed and each transaction contemplated by this Deed did not and will not violate in any respect a provision of:
  - (i) a law, judgment, ruling, order or decree binding on it or any of its Subsidiaries;
  - (ii) its constitution (as applicable); or
  - (iii) any other document or agreement that is binding on it or any of its Subsidiaries.
- (f) on the date of this Deed and the date the Bidder's Statement is despatched, Qube has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1 and it is not relying on the carve out in ASX Listing Rule 3.1A to withhold any material information from public disclosure;
- (g) as a continuing obligation, its capital structure, including all issued securities as at 7 February 2016, is as set out in Schedule 4 and no Qube Group Member has issued (or is actually or contingently required to issue) any other securities or instruments that are still outstanding (or may become outstanding) and that may convert into Qube Shares other than in connection with any Permitted Qube Securities Issue or which are issued or to be issued as Offer Consideration;
- (h) no Insolvency Event has occurred in relation to it, nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict its ability to fulfil its obligations under this Deed;
- (i) each Qube Group Member has complied in all material respects with all Australian and foreign laws and regulations applicable to it and orders of Australian and foreign Governmental Agencies having jurisdiction over it and the Qube Group has all material licenses, authorisations and permits necessary for it to conduct the business of the Qube Group as presently being conducted;
- (j) it is not aware of any information relating to the Qube Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this Deed that has or could reasonably be expected to give rise to a Qube Material Adverse Change that has not been publicly disclosed with ASIC or the ASX (which in each case is publicly available) or included in Qube's Disclosure Materials;



- (k) the Qube Shares to be issued as consideration for the Bid will be duly authorised and validly issued or transferred, fully paid and free of all security interests and third party rights and rank equally with all other Qube Shares then on issue;
- (l) it has collated and prepared all of its Disclosure Materials in good faith in response to particular written requests for information from the Target or its Representatives for the purposes of a due diligence process and in this context, as far as Qube is aware, its Disclosure Materials have been collated with all reasonable care and skill;
- (m) it will, as a continuing obligation, provide to the Target all further or new information which arises after the Target's Statement has been despatched to Target Shareholders until the close of the Offer Period which is necessary to ensure that information regarding Qube in the Target's Statement is not misleading or deceptive (including by way of omission);
- (n) it has or will have sufficient cash reserves (whether from internal cash reserves or external debt and/or equity funding arrangements) available to it on an unconditional basis (excepting conditions under the control of it) to meet its obligations to pay the Qube Cash Amount in accordance with its obligations under this Deed and the Qube Deed Poll; and
- (o) all information it has provided to the Independent Expert or to the Target is accurate and not misleading in any material respect, and it has not omitted any information required to make the information provided to the Independent Expert or the Target not misleading in a material respect.

#### **10.4 Qube indemnity**

Qube agrees with the Target (in its own right and separately as trustee or nominee for each other Target Indemnified Party) and the BidCo Shareholders (each in their own right and separately as trustee or nominee for each other Bidder Indemnified Party) to indemnify each Target Indemnified Party and Bidder Indemnified Party (as the case requires) against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that the Target Indemnified Party or Bidder Indemnified Party (as applicable) suffers, incurs or is liable for arising out of any breach of any of the representations and warranties given by Qube in this Deed.

#### **10.5 BidCo Shareholders' representations and warranties**

Each BidCo Shareholder, as applicable, severally represents and warrants to the Target (in its own right and separately as trustee for each other Target Indemnified Party) and Qube (in its own right and separately as trustee or nominee for each other Qube Indemnified Party) that:

- (a) as at the date of this Deed, CPPIB is a corporation duly established by statute and validly existing under the laws of the place of its incorporation (it being noted that the warranty in this paragraph (a) is given by CPPIB only);
- (b) as at the date of this Deed, GIP is empowered by the trust deed of the GIP Bell Australia Unit Trust to enter into and perform its obligations under this Deed in its capacity as a trustee of the GIP Bell Australia Unit Trust, and the GIP Bell Australia Unit Trust is duly established and validly subsisting (it being noted that the warranty in this paragraph (b) is given by GIP only);
- (c) as at the date of this Deed, Shunrong is a corporation duly incorporated and validly existing under the laws of the place of its incorporation (it being noted that the warranty in this paragraph (c) is given by Shunrong only);
- (d) it has the power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed;



- (e) it has taken all necessary corporate action to authorise the entry into this Deed and has taken or will take all necessary corporate action to authorise the performance of this Deed;
- (f) this Deed is a valid and binding obligation enforceable against it in accordance with its terms; and
- (g) the execution and performance by it of this Deed and each transaction contemplated by this Deed did not and will not violate in any respect a provision of:
  - (i) a law, judgment, ruling, order or decree binding on it or any of its Subsidiaries;
  - (ii) its constitution (as applicable); or
  - (iii) any other document or agreement that is binding on it or any of its Subsidiaries;
- (h) it will, as a continuing obligation, provide to the Target all further or new information which arises after the Target's Statement has been despatched to Target Shareholders until the close of the Offer Period which is necessary to ensure that information regarding BidCo or itself in the Target's Statement is not misleading or deceptive (including by way of omission);
- (i) BidCo will not have any shareholders other than an entity which is a BidCo Shareholder or a Related Corporation of a BidCo Shareholder (or an entity which holds shares in BidCo as nominee for a BidCo Shareholder or a Related Corporation of a BidCo Shareholder), or as may be disclosed to the Target;
- (j) no Insolvency Event has occurred in relation to it, nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict its ability to fulfil its obligations under this Deed;
- (k) it has or will have sufficient cash reserves (whether from internal cash reserves or external debt and/or equity funding arrangements) available to it on an unconditional basis (excepting conditions under the control of it) to meet its obligations to pay the consideration under the Bid in accordance with its obligations under this Deed; and
- (l) all information it has provided to the Independent Expert or to the Target is accurate and not misleading in any material respect, and it has not omitted any information required to make the information provided to the Independent Expert or the Target not misleading in a material respect.

#### 10.6 BidCo Shareholders' indemnity

Each BidCo Shareholder severally agrees with the Target (in its own right and separately as trustee or nominee for each other Target Indemnified Party) and Qube (in its own right and separately as trustee or nominee of each other Qube Indemnified Party) to indemnify each Target Indemnified Party and Qube Indemnified Party (as the case requires) against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that the Target Indemnified Party or Qube Indemnified Party (as applicable) suffers, incurs or is liable for arising out of any breach of any of the representations and warranties given by that BidCo Shareholder in this Deed.

#### 10.7 Reliance by parties

Each party (**Representor**) acknowledges that:

- (a) in entering into this Deed the other party or parties relied on the representations and warranties provided to them by the Representor under this clause 10; and

- (b) it has not entered into this Deed in reliance on any warranty or representation made by or on behalf of any other party except those warranties and representations set out in this Deed. This acknowledgment does not prejudice the rights any party may have in relation to any information filed by any other party with ASX or ASIC.

## **10.8 Notifications**

Each party will promptly advise the other parties 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 under this clause 10.

## **10.9 Status of representations and warranties**

Each representation and warranty in this clause 10:

- (a) is severable;
- (b) will survive the termination of this Deed; 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 Deed.

## **10.10 Survival of indemnities**

Each indemnity in this Deed (including those in clauses 10.2, 10.4 and 10.6):

- (a) is severable;
- (b) is a continuing obligation;
- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this Deed; and
- (d) survives the termination of this Deed.

## **10.11 Timing of representations and warranties**

Each representation and warranty made or given under this clause 10 is given at the date of this Deed and repeated continuously thereafter until the close of the Offer Period, unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.

# **11 Releases**

## **11.1 Target directors and officers**

- (a) The BidCo Shareholders and Qube release their respective rights, and agree with the Target that they will not make a claim, against any Target Indemnified Party (other than the Target and its Subsidiaries) as at the date of this Deed and from time to time in connection with:
  - (i) any breach of any representations and warranties of the Target or any Target Group Member in any Transaction Document; or
  - (ii) 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 where such Target Indemnified Party has not acted in good faith or has engaged in fraud or wilful misconduct. For the avoidance of doubt, nothing in this clause 11.1(a) limits the BidCo Shareholders' and Qube's rights to terminate this Deed under clause 14.2(a).

- (b) This clause 11.1 is subject to any restriction or limitation in the Corporations Act and will be read down accordingly.
- (c) The Target receives and holds the benefit of this clause 11.1 to the extent it relates to each Target Indemnified Party as trustee for each of them.

## **11.2 BidCo Shareholders' directors and officers**

- (a) The Target releases its rights, and agrees with the BidCo Shareholders that it will not make a claim, against any Bidder Indemnified Party (other than the BidCo Shareholders and their respective Related Corporations) as at the date of this Deed and from time to time in connection with:
  - (i) any breach of any representations and warranties of a BidCo Shareholder in any Transaction Document; or
  - (ii) any disclosure 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 where such Bidder Indemnified Party has not acted in good faith or has engaged in fraud or wilful misconduct. For the avoidance of doubt, nothing in this clause 11.2(a) limits the Target's rights to terminate this Deed under clause 14.2(b).
- (b) This clause 11.2 is subject to any restriction or limitation in the Corporations Act and will be read down accordingly.
- (c) The BidCo Shareholders receive and hold the benefit of this clause 11.2 to the extent it relates to each Bidder Indemnified Party as trustee for each of them.

## **11.3 Qube directors and officers**

- (a) The Target releases its rights, and agrees with Qube that it will not make a claim, against any Qube Indemnified Party (other than Qube and its respective related bodies corporate) as at the date of this Deed in connection with:
  - (i) any breach of any representations and warranties of Qube in this Deed; or
  - (ii) any disclosure 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 where such Qube Indemnified Party has not acted in good faith or has engaged in fraud or wilful misconduct. For the avoidance of doubt, nothing in this clause 11.3(a) limits the Target's rights to terminate this Deed under clause 14.2(b).
- (b) This clause 11.3 is subject to any restriction or limitation in the Corporations Act and will be read down accordingly.
- (c) Qube receives and holds the benefit of this clause 11.2 to the extent it relates to each Qube Indemnified Party as trustee for each of them.

## **12 Exclusivity**

### **12.1 No shop and no talk**

During the Exclusivity Period, the Target must not, and must ensure that each of its Representatives does not, directly or indirectly, without the prior written consent of the BidCo Shareholders and Qube:

- (a) **(no shop)** solicit, invite, encourage or initiate (including by the provision of non- public information to any Third Party) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause 12.1(a); or
- (b) **(no talk)** subject to clause 12.2:
  - (i) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or participate in or continue any negotiations or discussions with respect to any actual, proposed or potential Competing Proposal;
  - (ii) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal;
  - (iii) disclose or otherwise provide any non-public information about the business or affairs of the Target Group to a Third Party (other than a Governmental Agency that has a right to obtain that information and has sought it) with a view to obtaining, or which would reasonably be expected to encourage or lead to receipt of, an actual, proposed or potential Competing Proposal (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of the Target Group); or
  - (iv) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 12.1(b),

but nothing in this clause 12.1 prevents the Target from making normal presentations to brokers, portfolio investors and analysts in the ordinary course of business or promoting the merits of the Bid.

## 12.2 Fiduciary exception

Clause 12.1(b) does not prohibit any action or inaction by the Target or any of its Representatives in relation to an actual, proposed or potential Competing Proposal if compliance with that clause would, in the opinion of the Target Board, formed in good faith after receiving written advice from its external legal advisers, constitute, or would be likely to constitute, a breach of any of the fiduciary or statutory duties of the Target Directors, provided that any actual, proposed or potential Competing Proposal in question was not directly or indirectly brought about by, or facilitated by, a breach of clause 12.1(a).

## 12.3 Notification of approaches

- (a) During the Exclusivity Period, the Target must as soon as possible notify the BidCo Shareholders and Qube in writing if it, or any of its Representatives, becomes aware of any:
  - (i) negotiations or discussions, approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate any negotiations or discussions in respect of any inquiry, expression of interest, offer, proposal or discussion in relation to an actual, proposed or potential Competing Proposal;

- (ii) proposal made to the Target or any of its Representatives, in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal; or
- (iii) provision by the Target or any of its Representatives of any non-public information concerning the business or operations of the Target or the Target Group to any Third Party in connection with an actual, proposed or potential Competing Proposal,

whether direct or indirect, solicited or unsolicited, and in writing or otherwise. For the avoidance of doubt, any of the acts described in clauses 12.3(a)(i) to 12.3(a)(iii) may only be taken by the Target if not proscribed by clause 12.1 or if permitted by clause 12.2.

- (b) A notification given under clause 12.3(a) must include the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal, together with all material terms and conditions of the actual, proposed or potential Competing Proposal.

## 12.4 Matching right

- (a) Without limiting clause 12.1, during the Exclusivity Period, the Target:
  - (i) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, the Target or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and
  - (ii) must use its best endeavours to procure that none of the Target Directors change their recommendation in favour of the Bid to publicly recommend an actual, proposed or potential Competing Proposal (or recommend against the Bid),

unless:

  - (iii) the Target Board acting in good faith and in order to satisfy what the Target Board members consider to be their statutory or fiduciary duties (having received written advice from its external legal advisers) determines that the Competing Proposal would be or would be likely to be an actual, proposed or potential Superior Proposal;
  - (iv) the Target has provided the BidCo Shareholders and Qube with the material terms and conditions of the actual, proposed or potential Competing Proposal, including price and the identity of the Third Party making the actual, proposed or potential Competing Proposal;
  - (v) the Target has given the BidCo Shareholders and Qube at least five Business Days after the date of the provision of the information referred to in clause 12.4(a)(iv) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal; and
  - (vi) the BidCo Shareholders and Qube have not announced a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal by the expiry of the five Business Day period in clause 12.4(a)(v).
- (b) If the BidCo Shareholders and Qube propose to the Target, or announces, amendments to the Bid or a new proposal that constitute a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal (**Bidder Counterproposal**) by the expiry of the five Business Day period in clause 12.4(a)(v), the Target must procure that the Target Board considers the Bidder Counterproposal and if the Target Board,

acting reasonably and in good faith, determines that the Bidder Counterproposal would provide an equivalent or superior outcome for Target Shareholders as a whole compared with the Competing Proposal, taking into account all of the terms and conditions of the Bidder Counterproposal, then the Target and the BidCo Shareholders and Qube must use their best endeavours to agree the amendments to this Deed that are reasonably necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable, and the Target must use its best endeavours to procure that each Target Director continues to recommend the Bid (as modified by the Bidder Counterproposal) to Target Shareholders.

## 12.5 Cease discussions

- (a) The Target must cease any discussions or negotiations existing as at the date of this Deed relating to:
  - (i) any actual, proposed or potential Competing Proposal; or
  - (ii) any transaction that would, or would reasonably be expected to, reduce the likelihood of success of the Bid.
- (b) As soon as practicable, and in any event within five Business Days, following the date of this Deed, to the extent it has not already done so, the Target must:
  - (i) request in writing (and diligently enforce) the immediate return or destruction of all the Target's confidential information that has been provided to any Third Party since 30 June 2014 under a confidentiality agreement in relation to an actual, proposed or potential Competing Proposal (excluding any information provided under or in connection with the confidentiality agreement dated 15 June 2015 between the Target and Brookfield Infrastructure Group (Australia) Pty Limited, as amended) and terminate those persons' access to the Target's confidential information on an ongoing basis;
  - (ii) seek Court orders to cancel the scheme meeting proposed by the Brookfield Implementation Deed (and confirm to the BidCo Shareholders and Qube in writing once such orders have been received); and
  - (iii) confirm in writing that the Brookfield Implementation Deed has been terminated.
- (c) The Target will consult with the BidCo Shareholders and Qube in connection with the enforcement of any rights agreed by the Target with Third Parties in connection with the provision of confidential information including standstill obligations.

## 12.6 Provision of information

During the Exclusivity Period, the Target must as soon as possible provide the BidCo Shareholders and Qube 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 or the Target Group disclosed or otherwise provided to any Third Party in connection with an actual, proposed or potential Competing Proposal that has not previously been provided to the BidCo Shareholders and Qube (provided that it will not be obliged to so comply in respect of any information provided to Brookfield in connection with a Brookfield Proposal prior to the date of this Deed). For the avoidance of doubt, any such provision of information to a Third Party may only be undertaken if permitted by clause 12.2. Nothing in this clause 12.6 requires the Target to provide any Commercially Sensitive or Competitive Information to Qube, but this is subject to 4.6.

## 12.7 Legal advice

The Target represents and warrants to the BidCo Shareholders and Qube that:

- (a) prior to entering into this Deed, it has received legal advice on this Deed and the operation of this clause 12; and
- (b) it and the Target Board consider this clause 12 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 12 in order to secure the significant benefits to it, and Target Shareholders, resulting from the transactions contemplated hereby.

## 13 Break Fee

### 13.1 Background to Break Fee

- (a) The BidCo Shareholders, Qube and the Target acknowledge that, if they enter into this Deed and subsequently the Bid is not implemented, the BidCo Shareholders and Qube will incur significant costs, including those set out in clause 13.4.
- (b) In these circumstances, the BidCo Shareholders and Qube have requested that provision be made for the payments outlined in clause 13.2, without which the BidCo Shareholders and Qube would not have entered into this Deed or without which the BidCo Shareholders would not procure that BidCo make the Bid.
- (c) The Target Board believes, having taken advice from the Target's Advisers, that the implementation of the Bid will provide benefits to the Target and that it is appropriate for the Target to agree to the payments referred to in clause 13.2 in order to secure the BidCo Shareholders' and Qube's participation in the Bid.

### 13.2 Break Fee triggers

The Target must pay the Break Fee to the BidCo Shareholders and Qube or their respective nominees, without set-off or withholding, if:

- (a) a Competing Proposal of any kind is announced during the Exclusivity Period (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months of the date of such announcement:
  - (i) the Third Party or any Associate of that Third Party completes a Competing Proposal of a kind referred to in any of paragraphs (b), (c) or (d) of the definition of Competing Proposal, or a Competing Proposal of that kind involving the Third Party or any Associate of that Third Party becomes unconditional; or
  - (ii) without limiting clause 13.2(a)(i), the Third Party or any Associate of that Third Party acquires Control of the Target;
- (b) within 12 months after the date of this Deed, any Brookfield Proposal which was announced prior to the date of this Deed either:
  - (i) completes and any Brookfield Group Entity, or the acquiring entity under any such Brookfield Proposal, has a Relevant Interest in at least 50.1% of the Target Shares; or
  - (ii) becomes unconditional and any Brookfield Group Entity, or the bidder entity under any such Brookfield Proposal has a Relevant Interest in at least 50.1% of the Target Shares; or
- (c) the BidCo Shareholders and Qube terminate this Deed pursuant to clause 14.1(a)(i).



### 13.3 Timing of payment of Break Fee

- (a) A demand by the BidCo Shareholders and Qube for payment of the 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 one or more accounts into which the Break Fee must be paid.
- (b) The Target must pay the Break Fee into each account nominated by each BidCo Shareholder and Qube, without set-off or withholding, within two Business Days after receiving a demand for payment (and prior to any reconstitution of the Target Board following a Competing Proposal becoming unconditional) where the BidCo Shareholders and Qube are entitled under clause 13.2 to the Break Fee in their Consortium Respective Proportions.

### 13.4 Basis of Break Fee

The Break Fee has been calculated to reimburse the BidCo Shareholders and Qube for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Bid (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Bid or in not engaging in other alternative transactions or strategic initiatives, including costs arising from the BidCo Shareholders and Qube being associated with a failed transaction and its resulting loss in market position;
- (c) costs of management and directors' time in planning and implementing the Bid; and
- (d) out of pocket expenses incurred by the BidCo Shareholders, Qube and their respective employees, advisers and agents in planning and implementing the Bid,

and the parties agree that:

- (e) the costs actually incurred by the BidCo Shareholders and Qube will be of such a nature that they cannot all be accurately ascertained; and
- (f) the Break Fee is a genuine and reasonable pre-estimate of those costs.

### 13.5 Compliance with law

- (a) This clause 13 does not impose an obligation on the Target to pay the Break Fee to the extent (and only to the extent) that the obligation to pay the Break Fee:
  - (i) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
  - (ii) is determined to be unenforceable or unlawful by a court,

provided that all proper avenues of appeal and review, judicial and otherwise, have been exhausted. For the avoidance of doubt, any part of that fee that would not constitute 'unacceptable circumstances' or that is not unenforceable or unlawful (as applicable) must be paid by the Target.
- (b) The parties must not make or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 13.5(a).

### **13.6 Break Fee payable only once**

Where the Break Fee becomes payable to the BidCo Shareholders and Qube under clause 13.2 and is actually paid to the BidCo Shareholders and Qube, the BidCo Shareholders and Qube cannot make any claim against the Target for payment of any subsequent Break Fee.

### **13.7 Other Claims**

Notwithstanding any other provision of this Deed but subject to clause 13.6:

- (a) the maximum liability of the Target to the BidCo Shareholders and Qube under or in connection with this Deed including in respect of any breach of the Agreement will be the amount of the Break Fee;
- (b) a payment by the Target in accordance with this clause 13 represents the sole and absolute liability of the Target under or in connection with this Deed and no further damages, fees, expenses or reimbursements of any kind will be payable by the Target to the BidCo Shareholders and Qube in connection with this Deed;
- (c) the amount paid to the BidCo Shareholders and Qube under this clause 13 shall be reduced by the amount of any loss or damage recovered in relation to a breach of clause 12 or any other clause of this Deed; and
- (d) where clause 13.7(c) applies and the amount payable by the Target under this clause 13 has already been paid, the BidCo Shareholders and Qube must, within two Business Days after the event contemplated by clause 13.7(c) which would have reduced the amount payable, refund an amount to the Target which is equivalent to that calculated under clause 13.7(c), with each BidCo Shareholder and Qube responsible for their Consortium Respective Proportion of the refund.

### **13.8 No Break Fee if Bid proceeds**

Despite anything to the contrary in this Deed, no Break Fee will be payable if Completion occurs, notwithstanding the occurrence of any event in clause 13.2 and, if a Break Fee has already been paid it must be refunded by the BidCo Shareholders and Qube, with each BidCo Shareholder and Qube responsible for their Consortium Respective Proportion of the refund.

## **14 Termination**

### **14.1 Termination for material breach**

- (a) The BidCo Shareholders and Qube (acting jointly) or the Target party may terminate this Deed by written notice to each other party:
  - (i) other than in respect of a breach of representation or warranty provided by the BidCo Shareholders, Qube or the Target (which are dealt with in clause 14.2), at any time before the close of the Offer Period, if a party has materially breached this Deed, the party or parties entitled to terminate has given written notice to the party in breach of this Deed setting out the relevant circumstances and stating an intention to terminate this Deed, and the party in breach has failed to remedy the breach within five Business Days after the date on which the notice is given;
  - (ii) at any time before the close of the Offer Period if a Governmental Agency has taken any action permanently restraining or otherwise prohibiting or preventing the Bid or completion of the Ports Sale Agreement or BAPS Sale Agreement, or has refused to do any thing necessary to permit the Bid or completion of the Ports Sale Agreement or BAPS Sale Agreement to proceed, and the action or refusal has become final and cannot be appealed or reviewed;

- (iii) in the circumstances set out in, and in accordance with, clause 2.6; or
  - (iv) if BidCo withdraws the Bid or the Bid lapses for any reason, including non-satisfaction of a Condition; or
  - (v) if the Conditions have not been satisfied or waived on or before the End Date.
- (b) The BidCo Shareholders and Qube (acting jointly) may terminate this Deed by written notice to the Target at any time before the close of the Offer Period if:
  - (i) a Target Material Adverse Change or a Target Prescribed Occurrence occurs; or
  - (ii) any Target Board member fails to recommend the Bid or any Target Board member withdraws, adversely revises or adversely modifies his or her recommendation that Target Shareholders accept the Offer made to them or any Target Board member makes a public statement indicating that he or she no longer recommends the Bid or recommending, supporting or endorsing another transaction (including any Competing Proposal).
- (c) The Target may terminate this Deed by written notice to the BidCo Shareholders and Qube at any time before the close of the Offer Period if:
  - (i) a Qube Material Adverse Change or a Qube Prescribed Occurrence occurs; or
  - (ii) the Target Board or a majority of the Target Board has changed or withdrawn its recommendation as permitted under clause 7.2(b) and the Target has complied with all of its obligations under clause 13.

#### 14.2 Termination for breach of representations and warranties

- (a) The BidCo Shareholders and Qube (acting jointly) may, at any time before the close of the Offer Period, terminate this Deed for breach of a representation or warranty given by the Target only if:
  - (i) the BidCo Shareholders and Qube have given written notice to the Target setting out the relevant circumstances and stating an intention to withdraw the Bid or allow the Bid to lapse;
  - (ii) the relevant breach continues to exist five Business Days after the date on which the notice is given under clause 14.2(a)(i); and
  - (iii) the relevant breach is material in the context of the Bid taken as a whole.
- (b) The Target may, at any time before the close of the Offer Period, terminate this Deed for breach of a representation or warranty given by the BidCo Shareholders or Qube only if:
  - (i) the Target has given written notice to the BidCo Shareholders or Qube (as the case requires) setting out the relevant circumstances and stating an intention to terminate;
  - (ii) the relevant breach continues to exist five Business Days after the date on which the notice is given under clause 14.2(b)(i); and
  - (iii) the relevant breach is material in the context of the Bid taken as a whole.
- (c) This Deed is terminable if agreed to in writing by the BidCo Shareholders, Qube and the Target.

#### 14.3 Effect of termination

If this Deed is terminated under clause 2.6, 14.1 or 14.2:

- (a) each party will be released from its obligations under this Deed, except that this clause 14.3, and clauses 1, 9, 10, 11, 13, 15, 16, 17, 18 (except clause 18.7), will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against each other party in respect of any past breach of this Deed; and
- (c) in all other respects, all future obligations of the parties under this Deed will immediately terminate and be of no further force and effect including any further obligations in respect of the Bid.

#### **14.4 Termination**

Where a party has a right to terminate this Deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to each other party stating that it terminates this Deed and the provision under which it is terminating this Deed.

#### **14.5 No other termination**

No party may terminate or rescind this Deed except as permitted under clause 2.6, 14.1 or 14.2.

### **15 GST**

#### **15.1 Recovery of GST**

All consideration provided under this Deed is exclusive of GST unless it is specifically expressed to be GST inclusive. If GST is payable, or notionally payable, on a supply made under or in connection with this Deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

#### **15.2 Liability net of GST**

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

#### **15.3 Adjustment events**

If an adjustment event occurs in relation to a supply made under or in connection with this Deed, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

#### **15.4 Cost exclusive of GST**

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

#### **15.5 Survival**

This clause 15 will not merge upon completion and will continue to apply after expiration or termination of this Deed.

## 15.6 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) will have the same meaning in this clause.

## 16 Trustee Limitation of Liability

Notwithstanding any other provision in this Deed:

- (a) Global Infrastructure Management Australia Pty Ltd (ACN 132 664 745) (the **Trustee**) enters into this Deed only in its capacity as trustee of the GIP Bell Australia Unit Trust (the **Trust**) and in no other capacity. A liability arising under or in connection with this Deed is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of property of the Trust out of which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.
- (b) The parties other than the Trustee may not sue the Trustee in any capacity other than as trustee of the Trust, including to seek the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).
- (c) The provisions of this clause 16 shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under the trust deed establishing the Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust, as a result of the Trustee's fraud, negligence or wilful default.
- (d) No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this Deed) will be considered fraud, negligence or wilful default of the Trustee for the purpose of clause 16(c) to the extent to which the act or omission was caused or contributed to by any failure by any other person to fulfil its obligations relating to the Trust or by any other act or omission of any other person.
- (e) No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Trustee for the purposes of clause 16(c).
- (f) The Trustee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in clauses 16(a) to 16(c).

## 17 Notices

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

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

address below or the address or email address last notified by the intended recipient to the sender:

(i) to the Target:

Address: Level 6/15 Blue Street, North  
Sydney, NSW, Australia 2060  
Email: Lyndall\_Stoyles@asciano.com.au  
Attention: Lyndall Stoyles

**Copy to:**

King & Wood Mallesons  
Address: Level 42, 600 Bourke Street,  
Melbourne, VIC, 3000  
Email: Stephen.minns@au.kwm.com  
Attention: Stephen Minns

(ii) to the BidCo Shareholders:

GIP

Address: 12 East 49th Street, 38th Floor  
New York, New York 10017, USA  
Email: Julie.Ashworth@global-infra.com  
Attention: Julie Ashworth

CPPIB

Address: One Queen Street East, Suite  
2500, Toronto, Ontario M5C 2W5 Canada  
Email: bhogg@cppib.com and  
pbernath@cppib.com  
Attention: Bruce Hogg and Paul Bernath

Shunrong

Address: 1939, 19/F, No. 1 Chaoyangmen  
Beidajie, Dongcheng District, Beijing,  
100010, China  
Email: [wangy@china-inv.cn](mailto:wangy@china-inv.cn) /  
[baojm@china-inv.cn](mailto:baojm@china-inv.cn)  
Attention: Ms. Wang Yan / Mr. Bao  
Jianmin

**Copy to:**

Allens  
Address: Deutsche Bank Place, 126  
Phillip St, Sydney NSW 2000  
Email: Guy.Alexander@allens.com.au and  
Tom.Story@allens.com.au  
Attention: Guy Alexander and Tom Story

(iii) to Qube:

Address: Level 27, 45 Clarence Street,  
Sydney NSW, 2000  
Email: william.hara@qube.com.au  
Attention: William Hara

**Copy to:**

Gilbert + Tobin  
Address: Level 37, 2 Park Street, Sydney

NSW 2000  
 Email: ABullock@gtlaw.com.au  
 Attention: Andrew Bullock

- (c) will be conclusively taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);
  - (iii) in the case of email, the earlier of:
    - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
    - (B) the time that the intended recipient confirms receipt by reply email; and
    - (C) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made:

- (1) in the case of delivery by hand or post, at a time that is later than 5pm;
- (2) in the case of delivery by email, at a time that is later than 7pm;  
or
- (3) on a day that is not a business day,

in the place specified by the intended recipient as its postal address under clause 17(b), it will be conclusively taken to have been duly given or made at the start of business on the next business day in that place.

## **18 Miscellaneous**

### **18.1 No waiver**

A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

### **18.2 Remedies cumulative**

The rights, powers and remedies provided to each party in this Deed are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

### **18.3 Entire agreement**

This Deed and the Confidentiality Agreement contain the entire agreement between the parties with respect to their subject matter. They set out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersede all earlier Conduct by or between the parties in connection with their subject matter. No party has relied on or is relying on any other Conduct in entering into this Deed and completing the transactions contemplated by it. If there is any inconsistency between the provisions of this Deed and the provisions of a Confidentiality Agreement, the provisions of this



Deed will prevail to the extent of any inconsistency and the provisions of the Confidentiality Agreement will be construed accordingly.

#### **18.4 Amendment**

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

#### **18.5 Assignment**

No party can assign, charge, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of each other party.

#### **18.6 No merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

#### **18.7 Further assurances**

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

#### **18.8 Costs and duty**

- (a) Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this Deed and the proposed, attempted or actual implementation of this Deed and the Bid.
- (b) The BidCo Shareholders and Qube in their Consortium Respective Proportions:
  - (i) must pay all stamp duty and any fines, penalties and interest with respect to such stamp duty in respect of this Deed or any transaction evidenced by this Deed; and
  - (ii) indemnify the Target against any liability arising from their failure to comply with clause 18.8(b)(i),

except to the extent otherwise agreed by the parties or except to the extent that another Transaction Document provides that such stamp duty and any fines, penalties and interest with respect to such stamp duty is to be borne by a particular person or persons.

#### **18.9 Severability of provisions**

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

#### **18.10 Service of process**

Without preventing any other mode of service, any document in action (including any writ of summons or other originating process) or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under clause 17.

**18.11 Governing law and jurisdiction**

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

**18.12 Counterparts**

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

## Schedule 1

### Conditions

- (a) **(FIRB approval)** Before the end of the Offer Period, either:
  - (i) the Treasurer of the Commonwealth of Australia (or his delegate) provides written notice that there are no objections under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**) to:
    - (A) the acquisition of Target Shares under the Bid and any direct or any indirect investment by the BidCo Shareholders or their respective Related Corporations in BidCo and BAPS HoldCo, and that notice is not subject to any condition; and
    - (B) the acquisition by BAPS HoldCo under the BAPS Sale Agreement of all the issued shares in BAPSCo, and that notice is not subject to any condition; or
  - (ii) the Treasurer of the Commonwealth of Australia becomes precluded by passage of time from making any order or decision under Division 2 of Part 3 of the FATA in respect of:
    - (A) the acquisition of Target Shares under the Bid and any direct or any indirect investment by the BidCo Shareholders or their respective Related Corporations in BidCo and BAPS HoldCo; and
    - (B) the acquisition by BAPS HoldCo under the BAPS Sale Agreement of all the issued shares in BAPSCo.
- (b) **(NZ OIO approval)** Before the end of the Offer Period, all consents under the Overseas Investment Act 2005 (NZ) and the Overseas Investment Regulations 2005 (NZ) required to implement the Bid, to fund the Offer Consideration and to complete the transactions contemplated by the Ports Sale Agreement and BAPS Sale Agreement have been granted, and such consents have not been withdrawn, suspended, revoked at the close of the Offer Period.
- (c) **(ASIC and ASX approval)**: Before the end of the Offer Period, ASIC and ASX issue or provide all reliefs, waivers confirmations, exemptions, consents or approvals, and do all other acts, necessary or desirable to implement the Bid, and to implement the capital reduction and dividend referred to in the definition of Shareholder Resolutions (which is referred to in paragraph (h) of this Schedule 1), and such reliefs, waivers confirmations, exemptions, consents, approvals or other acts (as the case may be) have not been withdrawn, suspended or revoked at the close of the Offer Period.
- (d) **(ACCC approval – acquisition of Target shares)** Prior to the end of the Offer Period, either:
  - (i) the ACCC gives an unconditional notice in writing to BidCo (or one or more BidCo Shareholders), whether or not obtained after the provision of any undertakings or other concessions requested or required by the ACCC to facilitate such notice, that it does not intend or propose to object to, or intervene in, the acquisition by BidCo of all of the shares in the Target and any direct or any indirect investment by the BidCo Shareholders or their respective Related Corporations in BidCo, pursuant to section 50 of the *Competition and Consumer Act 2010* (Cth), and that notice has not been withdrawn, revoked or adversely amended; or

- (ii) BidCo has obtained an unconditional authorisation, approval, notification or declaration of no restraint or intervention from the Australian Competition Tribunal or the Federal Court for the acquisition by BidCo of all of the shares in the Target and any direct or any indirect investment by the BidCo Shareholders or their respective Related Corporations in BidCo, and such authorisation, approval, notification or declaration has not been withdrawn, revoked or adversely amended or appealed.
- (e) **(ACCC approval – acquisition of Ports Businesses)** Prior to the end of the Offer Period, either:
  - (i) the ACCC gives an unconditional notice in writing to Qube, whether or not obtained after the provision of any undertakings or other concessions requested or required by the ACCC to facilitate such notice, that it does not intend or propose to object to, or intervene in, the acquisition by Qube of PortCo, pursuant to section 50 of the *Competition and Consumer Act 2010* (Cth), and that notice has not been withdrawn, revoked or adversely amended; or
  - (ii) Qube has obtained an unconditional authorisation, approval, notification or declaration of no restraint or intervention from the Australian Competition Tribunal or the Federal Court for the acquisition of PortCo, and such authorisation, approval, notification or declaration has not been withdrawn, revoked or adversely amended or appealed.
- (f) **(ACCC approval – acquisition of BAPS Businesses)** Prior to the end of the Offer Period, either:
  - (i) the ACCC gives an unconditional notice in writing to BAPS HoldCo (or one or more of the BidCo Shareholders), whether or not obtained after the provision of any undertakings or other concessions requested or required by the ACCC to facilitate such notice, that it does not intend or propose to object to, or intervene in, the acquisition by BAPS HoldCo of BAPSCo and any direct or any indirect investment by the BidCo Shareholders or their respective Related Corporations in BAPS HoldCo, pursuant to section 50 of the *Competition and Consumer Act 2010* (Cth), and that notice has not been withdrawn, revoked or adversely amended; or
  - (ii) BAPS HoldCo (or one or more of the BidCo Shareholders) has obtained an unconditional authorisation, approval, notification or declaration of no restraint or intervention from the Australian Competition Tribunal or the Federal Court for the acquisition by BAPS HoldCo of BAPSCo and any direct or any indirect investment by the BidCo Shareholders or their respective Related Corporations in BAPS HoldCo, and such authorisation, approval, notification or declaration has not been withdrawn, revoked or adversely amended or appealed.
- (g) **(EU Merger Regulation)** If the Transaction or parts of the Transaction constitute a concentration with a community dimension under the EU Merger Regulation, the European Commission shall have taken a decision (or been deemed to have taken a decision) under Article 6(1)(b) of the EU Merger Regulation declaring the Transaction compatible with the common market. For this purpose, **Transaction** means: (i) the acquisition by BidCo of all of the Target Shares; (ii) the acquisition by BAPS HoldCo of BAPSCo; and (iii) any direct or indirect investment by the BidCo Shareholders or their respective Related Corporations in BidCo and BAPS HoldCo.
- (h) **(Target shareholder approval)**: Before the end of the Offer Period, Target Shareholders approve the Shareholder Resolutions and the Ports Sale Agreement and BAPS Sale Agreement have not been terminated.

- (i) **(No Target Prescribed Occurrence):** No Target Prescribed Occurrence occurs between (and including) 7 February 2016 and the close of the Offer Period.
- (j) **(No Target Material Adverse Change):** No Target Material Adverse change occurs or is reasonably likely to occur, or is discovered, announced, disclosed or otherwise becomes known to BidCo between (and including) 7 February 2016 and the close of the Offer Period.
- (k) **(Minimum relevant interest)** Before the end of the Offer Period, BidCo has (together with its Associates) Relevant Interests in at least 50.1% of the Target Shares.
- (l) **(Minimum bid price):** No requirement arises under section 621(3) of the Corporations Act (as modified by ASIC Corporations (Minimum Bid Price) Instrument 2015/1068) to increase the Offer Consideration as a result of a fall in the value of a Qube Share after the date of this Deed.
- (m) **(Restraints):** Between 7 February 2016 and the end of the Offer Period (each inclusive):
  - (i) there is not in effect any temporary, preliminary or final order, injunction, decision or decree issued by a Governmental Agency; and
  - (ii) no action or investigation is announced, commenced or threatened by any Governmental Agency,

in consequence of or in connection with the Offer that:

  - (i) restrains, prohibits or impedes, or threatens to restrain, prohibit or impede, or otherwise materially adversely impacts on, the making of the Offer or the acquisition of Target Shares under the Offer or the completion of any transaction contemplated by a Transaction Document (whether subject to conditions or not) or the rights of BidCo or the BidCo Shareholders or their respective Related Corporations in respect of the Target and Target Shares to be acquired pursuant to the Offer; or
  - (ii) requires the divestiture by BidCo or the BidCo Shareholders or any of their respective Related Corporations of any Target Shares, or the divestiture of any assets of the Target Group or of a BidCo Shareholder or Qube or any of their respective Related Corporations other than those sales contemplated by any Transaction Document.
- (n) **(Third party consents)** All approvals and consents of a third party which the Target and Qube have agreed in the Disclosure Letter given by the Target to Qube are necessary to transfer the shares in PortCo under the Ports Sale Agreement in respect of the Port Botany container terminal site and the Port of Brisbane / Fisherman Island container terminal site are obtained (including approvals or consents to avoid breach of any change of control provisions) and such approvals and consents have not been withdrawn, suspended or revoked before the end of the Offer Period.

## Schedule 2

### Agreed Bid Terms

#### 1 Offer Consideration

- (a) The consideration to be offered in respect of each Target Share under the Bid will be:
  - (i) A\$7.04 in cash, which includes the Qube Cash Amount payable by Qube in accordance with the Qube Deed Poll less the aggregate value of any Target Permitted Dividend; and
  - (ii) 1 Qube Share,
 subject to any deduction under paragraph (b) below.
- (b) If a holder of Target Shares accepts the Offer in respect of their Target Shares (an **Accepting Shareholder**), BidCo is entitled to all Rights in respect of those Target Shares, other than the Right to any Target Permitted Dividend. BidCo may require an Accepting Shareholder to provide all documents necessary to vest title to those Rights in BidCo, or otherwise to give BidCo the benefit or value of those Rights. If the Accepting Shareholder does not give those documents to BidCo, or if the Accepting Shareholder has (or any previous owner of an Accepting Shareholder's Target Shares has) received the benefit of those Rights then BidCo will deduct from the consideration otherwise due to the Accepting Shareholder the amount (or value, as reasonably assessed by BidCo) of those Rights.
- (c) The aggregate number of Qube Shares to be issued to a Target Shareholder as consideration under the Bid will be rounded to the nearest whole number (with a fractional entitlement to 0.5 Qube Shares being rounded up).

#### 2 Offer Period

Subject to any extensions by BidCo or that arise automatically under the Corporations Act, the Offer Period will be not less than one month (unless the Offer is withdrawn during that period under section 652B of the Corporations Act).

#### 3 Bid conditions

The Bid will be subject to the Conditions. Each of the Conditions is a separate, several and distinct condition. No Condition will be taken to limit the meaning or effect of any other Condition.

#### 4 Other

- (a) The Offer terms will provide that Target Shareholders can continue to exercise all voting rights attached to their Target Shares while the Bid remains conditional.
- (b) The Offer will also contain provisions determined by the BidCo Shareholders, acting reasonably, in relation to the treatment of Target Shareholders outside Australia and small parcel shareholders.

### Schedule 3

#### Target Rights

Target Right	Number of Target Rights granted and outstanding as at 7 February 2016
FY13 Long Term Incentive Plan	480,871
FY14 Long Term Incentive Plan	862,677
FY15 Long Term Incentive Plan	867,149
FY16 Long Term Incentive Plan	652,157
FY 14 Short Term Incentive Plan – Tranche 2	187,184
FY 15 Short Term Incentive Plan – Tranche 1	154,283
FY 15 Short Term Incentive Plan – Tranche 2	154,260
<b>Total</b>	<b>3,358,581</b>



## Schedule 4

### Capital Details

#### 1 Target

Security	Total number on issue
Target Shares	975,385,664
Target Rights	As set out in Schedule 3

#### 2 Qube

Security	Total number on issue
Qube Shares	1,060,575,767
Qube Options (each conferring on the holder a right to subscribe for one Qube Share at A\$2.2442)	22,121,040
Qube Performance Rights – FY13 Long Term Incentive Plan	2,897,110
Qube Performance Rights – FY14 Long Term Incentive Plan	3,956,822
Qube Performance Rights – FY15 Long Term Incentive Plan	2,659,079

## Schedule 5

### Indicative Timetable

Date	Event
5 <sup>th</sup> Business Day after the date of this Deed	BidCo serves Bidder's Statement on Target, lodges it with ASIC and gives it to ASX
9 <sup>th</sup> Business Day after the date of this Deed	Target provides draft Notice of Meeting to ASIC and ASX for review
14 <sup>th</sup> Business Day after the date of this Deed	BidCo despatches Bidder's Statement to Target Shareholders
20 <sup>th</sup> Business Day after the date of this Deed	Target serves Target's Statement on BidCo, lodges it with ASIC and gives it to ASX
20 <sup>th</sup> Business Day after the date of this Deed	Target despatches Target's Statement and Notice of Meeting to Target Shareholders
42 <sup>th</sup> Business Day after the date of this Deed	General Meeting is held

## Schedule 6

### Shareholder Resolutions

#### RESOLUTION 1

To consider and, if thought fit, to pass the following resolution as an ordinary resolution.

That, subject to and conditional on the other resolutions in this Notice of General Meeting being passed, for the purposes of ASX Listing Rule 10.1, section 208 of the *Corporations Act 2001* (Cth) and for all other purposes, approval is given for the disposal by Asciano Limited (**Asciano**) (or a subsidiary of Asciano) of all of the issued shares in [insert name of PortCo] to [insert name of Qube purchaser] on the terms and conditions described in the Explanatory Memorandum accompanying this Notice of General Meeting.

#### RESOLUTION 2

To consider and, if thought fit, to pass the following resolution as an ordinary resolution.

That, subject to and conditional on the other resolutions in this Notice of General Meeting being passed, for the purposes of ASX Listing Rule 10.1, section 208 of the *Corporations Act 2001* (Cth) and for all other purposes, approval is given for the disposal by Asciano (or a subsidiary of Asciano) of all of the issued shares in [insert name of BAPSCo] to [insert name of BAPS HoldCo] or a nominee on the terms and conditions described in the Explanatory Memorandum accompanying this Notice of General Meeting.

#### RESOLUTION 3

To consider and, if thought fit, to pass the following resolution as an ordinary resolution.

That, subject to and conditional on the other resolutions in this Notice of General Meeting being passed, for the purposes of Part 2J.1 of the *Corporations Act 2001* (Cth) and for all other purposes, approval is given for Asciano to reduce its share capital by way of equal capital reduction and to declare a dividend as follows:

- (b) Asciano's share capital will be reduced by an amount per fully-paid ordinary share in Asciano (**Asciano Share**) to be determined by the board of Asciano (the **Capital Return**), provided that the aggregate Capital Return amount on all Asciano Shares does not exceed A\$3,500,000,000 and is in accordance with the amount identified in a private ruling obtained from the Commissioner of Taxation in relation to this return of capital;
- (c) a dividend payable on each Asciano Share (**Dividend**) to be determined by the board of Asciano, provided that the aggregate Dividend amount on all Asciano Shares is equal to the amount identified in a private ruling obtained from the Commissioner of Taxation in relation to the return of capital referenced immediately above and, when aggregated with the aggregate Capital Return amount on all Asciano Shares, does not exceed A\$3,500,000,000;
- (d) Asciano will pay the Capital Return and Dividend to each registered holder of Asciano Shares:
  - (i) as at such record date; and
  - (i) on such payment date;
 to be specified by the board of Asciano; and
- (e) the Capital Return and Dividend will be paid in cash to each registered holder of Asciano Shares who is entitled to receive the Capital Return and Dividend, except where the

holder has in accordance with the procedure set out in the Explanatory Memorandum accompanying this Notice of General Meeting applied to receive the Capital Return and Dividend in the form of promissory notes described in the Explanatory Memorandum accompanying this Notice of General Meeting that are issued by Qube Holdings Limited (ACN 149 723 053) (**Qube Promissory Notes**) and endorsed by Asciano in favour of the holder, in which case Asciano will have discharged its obligation to pay the Capital Return and Dividend to that holder upon endorsing the Qube Promissory Notes in favour of the holder and despatching those Qube Promissory Notes to the holder.

Bid Implementation Deed

**Allens < Linklaters**

Executed and delivered as a Deed.

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



Director Signature

**MARK LEVITT**

Print Name



Director/Secretary Signature

**ARI DROGA**

Print Name

**Signed Sealed and Delivered by Canada Pension Plan Investment Board** in the presence of:

Signature of Witness

Name of Witness

Signature of Authorised Signatory

Name of Authorised Signatory

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Qube Holdings Limited**:

Director Signature

Print Name

Director/Secretary Signature

Print Name

Executed and delivered as a Deed.

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

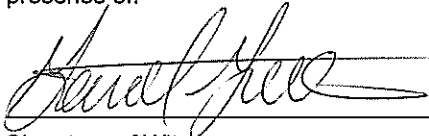
\_\_\_\_\_  
Director Signature

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Signed Sealed and Delivered by Canada Pension Plan Investment Board** in the presence of:



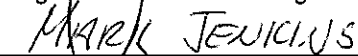
\_\_\_\_\_  
Signature of Witness



\_\_\_\_\_  
Name of Witness



\_\_\_\_\_  
Signature of Authorised Signatory



\_\_\_\_\_  
Name of Authorised Signatory

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Qube Holdings Limited**:

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

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

Bid Implementation Deed

Allens < Linklaters

Executed and delivered as a Deed

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

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

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Signed Sealed and Delivered by Canada  
Pension Plan Investment Board** in the  
presence of:

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

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name of Authorised Signatory

Executed as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**Qube Holdings Limited**

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

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

\_\_\_\_\_  
Print Name


\_\_\_\_\_  
Print Name

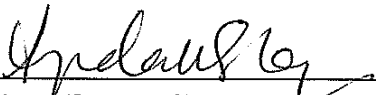


Bid Implementation Deed

Allens & Linklaters

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

  
\_\_\_\_\_  
Director Signature  
John Muller  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Director/Secretary Signature  
Lyndall Stoyles  
\_\_\_\_\_  
Print Name

**Signed Sealed and Delivered by Beijing  
Shunrong Investment Corporation** in the  
presence of:

\_\_\_\_\_  
Signature of Witness  
  
\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Authorised Signatory  
  
\_\_\_\_\_  
Name of Authorised Signatory

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

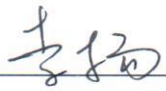
\_\_\_\_\_  
Director Signature

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Signed Sealed and Delivered** by **Beijing  
Shunrong Investment Corporation** in the  
presence of:

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

  
\_\_\_\_\_  
Name of Witness

  
\_\_\_\_\_  
Signature of Authorised Signatory

  
\_\_\_\_\_  
Name of Authorised Signatory