

Supplemental Deed

Macquarie Communications Infrastructure
Management Limited

Freehills

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Supplemental Deed

Date ▶ 7 July 2009

This deed poll is made by

Manager **Macquarie Communications Infrastructure Management Limited**
(ACN 066 047 738) of 1 Martin Place, Sydney NSW 2000
in its capacity as responsible entity of Macquarie Communications
Infrastructure Trust (ARSN 101 048 293)
(Manager)

Recitals	<ol style="list-style-type: none">1 Manager is a public company limited by shares, incorporated in Australia and registered in New South Wales. Its registered office is at 1 Martin Place, Sydney, New South Wales 2000.2 Manager is the responsible entity of the Macquarie Communications Infrastructure Trust (ARSN 101 048 293) (Trust) established under a deed poll dated 19 June 2002 (Constitution).3 The Trust has been registered by the Australian Securities and Investments Commission (ASIC) as a managed investment scheme pursuant to section 601EB of the Corporations Act 2001 (Cth) (Corporations Act).4 Units are Stapled to MMCGIL Shares and MCIL Shares on a one-for-one-for-one basis and the Stapled Securities are officially quoted on the financial market conducted by ASX. As at the date of this deed, 546,254,151 Stapled Securities, comprising 546,254,151 Units, 546,254,151 MMCGIL Shares and 546,254,151 MCIL Shares, were on issue.5 CPPIB Communications Pty Ltd (Bidder) is a company limited by shares, incorporated in Victoria. Its registered office is at Level 29, 530 Collins Street, Melbourne, VIC 3000. Bidder is an entity wholly owned and controlled by CPPIB.6 CPPIB is a Canadian Crown corporation established by the <i>Canada Pension Plan Investment Board Act 1997</i>. Its registered office is at One Queen Street East, Suite 2600, Toronto, M5C 2W5, Canada.7 Manager (acting in its capacity as responsible entity of the Trust), MMCGIL, MCIL and CPPIB agreed, by executing a Scheme Implementation Agreement dated 31 March 2009, to propose and implement, and in the case of CPPIB, also to procure that Bidder will propose and implement, the Trust Scheme and the Share Schemes.
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	<p>8 The Constitution must be amended to facilitate the Trust Scheme.</p> <p>9 Section 601GC(1)(a) of the Corporations Act provides that the Constitution may be modified by special resolution of Unitholders.</p> <p>10 Clause 24 of the Constitution provides that Manager may, by executing a supplemental deed, give effect to a resolution of Unitholders to amend the Constitution.</p> <p>11 At a meeting held on 17 June 2009 convened in accordance with the Corporations Act and clause 17.1 of the Constitution, Unitholders approved the Trust Scheme Resolutions, including a special resolution to make the amendments to the Constitution contained in this deed.</p> <p>12 Pursuant to section 601GC(2) of the Corporations Act, Manager must lodge a copy of this deed with ASIC and the amendments to the Constitution contained in this deed cannot take effect until a copy of this deed has been lodged with ASIC.</p>
<p>This deed witnesses as follows:</p>	

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
ASX	ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market conducted by it.
Bermuda Court	the Supreme Court of Bermuda.
Bidder	CPPIB Communications Pty Ltd (ACN 136 263 011).
Business Day	a day that is not a Saturday, Sunday, bank holiday or public holiday in New South Wales, Australia.
Companies Act	the <i>Companies Act 1981</i> of Bermuda.
Court	the Supreme Court of New South Wales.
Effective	when used in relation to the Schemes, all of the following events taking place: <ol style="list-style-type: none">1 the order of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to the MCIL Share Scheme coming into effect pursuant to section 411(10) of the Corporations Act;2 the order of the Bermuda Court made under section 99(2) of the Companies Act in relation to the MMCGIL Share Scheme coming into effect pursuant to section 99(3) of the Companies Act; and3 this deed taking effect pursuant to section 601GC(2) of the Corporations Act.
Effective Date	the date on which all the Schemes have become Effective.
Effective Time	the date and time at which all the Schemes have become Effective.

Term	Meaning
MCIL	Macquarie Communications Infrastructure Limited (ABN 18 084 388 983).
MCIL Share	one fully paid ordinary share issued in the capital of MCIL.
MCIL Share Scheme	the scheme of arrangement pursuant to Part 5.1 of the Corporations Act between MCIL and registered holders of MCIL Shares (other than MCIML), under which Bidder acquires all of the MCIL Shares (other than those held by MCIML), together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by CPPIB and MCIL.
MCIML	Macquarie Communications Infrastructure Management Limited (ABN 29 066 047 738), in its personal capacity.
MMCGIL Share	one fully paid ordinary share issued in the capital of MMCGIL.
MMCGIL	Macquarie MCG International Limited (ARBN 112 652 490), a company incorporated in Bermuda with registration number 35258.
MMCGIL Share Scheme	the scheme of arrangement pursuant to section 99 of the Companies Act between MMCGIL and registered holders of MMCGIL Shares (other than MCIML), under which Bidder acquires all of the MMCGIL Shares (other than those held by MCIML), together with any alterations or conditions made or required by the Bermuda Court and approved in writing by CPPIB and MMCGIL.
Scheme Record Date	the fifth Business Day following the Effective Date, or such other date (after the Effective Date) as Target and CPPIB may agree in writing.
Scheme Unit	each Unit on issue as at 5.00pm on the Scheme Record Date, other than those held by MCIML.
Scheme Unitholder	each person who is a Unitholder as at 7.00pm on the Scheme Record Date, other than MCIML.
Schemes	the Share Schemes and the Trust Scheme.
Share Schemes	the MMCGIL Share Scheme and the MCIL Share Scheme.
Stapled	the linking together of Units, MCIL Shares and MMCGIL Shares so that one may not be transferred, or otherwise dealt with, without the other or

Term	Meaning
	others and which are quoted on the ASX jointly as a 'stapled security' or such other term as the ASX permits.
Stapled Security	a Unit, a MCIL Share and a MMCGIL Share which are Stapled together and registered in the name of the Unitholder.
Trust Scheme	the arrangement facilitated by the amendments to the Constitution contained in this deed under which Bidder acquires all of the Scheme Units from Scheme Unitholders.
Trust Scheme Resolutions	<p>the resolutions of Unitholders to approve the Trust Scheme set out in the notice of meeting of Unitholders dated 4 May 2009, including:</p> <ol style="list-style-type: none"> 1 a resolution for the purposes of item 7 of section 611 of the Corporations Act to approve the acquisition by Bidder of all the Scheme Units held by Scheme Unitholders; and 2 a resolution for the purposes of section 601GC(1) of the Corporations Act to approve amendments to the Constitution as set out in this deed.
Unit	one fully paid ordinary unit in the Trust.
Unitholder	each person who is registered as the holder of Units, and Unitholders means all of them.

1.2 Interpretation

The following rules apply in interpreting this deed, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (d) a reference to an agreement, document or instrument (including to this deed, and to any regulatory guide, standard or guidance note) includes the agreement, document or instrument as novated, amended, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, AUD, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Sydney, Australia time;

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- (g) if a time period is specified and dates from a given date or the day of an act or event, it is to be calculated exclusive of that day;
- (h) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (i) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (j) a reference to a person, natural person, trust, partnership, body corporate, association, unincorporated body, governmental or local authority or agency or other entity includes any of them;
- (k) a reference to a statute, ordinance, code or other law, or regulation, includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) a word or expression defined in either the Corporations Act or the Companies Act (as applicable) has the corresponding meaning given to it in the Corporations Act or Companies Act;
- (m) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (p) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it;
- (q) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (r) a reference to amend includes delete or replace.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2 Lodgement with ASIC

Manager must lodge a copy of this deed with ASIC on the same day that MCIL lodges with ASIC an office copy of the order of the court approving the MCIL Scheme under section 411(4)(b) of the Corporations Act.

3 Amendments to the Constitution

With effect on and from the Effective Time, the Constitution is amended as follows:

- (a) in clause 21.1(a), inserting the words 'and clause 21.2A' after the words 'Subject to the Corporations Act';
- (b) in clause 21.2(a), inserting the words ' and clause 21.2A' after the words ' Subject to the Corporations Act';
- (c) by inserting new clause 21.2A after clause 21.2 as follows:

Fees where Trust Scheme implemented

21.2A The Manager is not entitled to the Base Fee or a Performance Fee in respect of any period after 31 March 2009.

- (d) in clause 31.1, by amending the definitions to read as set out below:

Business Day

- (1) for the purposes of clause 32, a day that is not a Saturday, Sunday, bank holiday or public holiday in New South Wales, Australia; and
- (2) for all other purposes, a day other than a Saturday or Sunday on which banks are open for general banking business in Sydney and Melbourne but if the Units are Officially Quoted has the meaning given to that term in the Listing Rules.

Security

- (a) for the purposes of clause 32, a stapled security comprising one MCIL Scheme Share, one MMCGIL Scheme Share and one Scheme Unit; and
 - (b) for all other purposes:
 - (i) while the Units are Stapled, a Stapled Security; and
 - (ii) while the Units are not Stapled, a Unit.
- (e) in clause 31.1, by inserting the following new definitions in alphabetical order:

ADI the meaning given to the term 'authorised deposit-taking institution' in the *Banking Act 1959* (Cth) of Australia.

Aggregate Scheme Consideration the aggregate of all Scheme Consideration payable to Scheme Participants under the Schemes.

ASTC ASX Settlement and Transfer Corporation Pty Limited (ABN 49 008 504 532).

ASTC Settlement Rules the operating rules of the settlement facility of the ASTC for the purposes of the Corporations Act.

Bermuda Court the Supreme Court of Bermuda.

Bidder CPPIB Communications Pty Ltd (ACN 136 263 011).

CHESS the Clearing House Electronic Subregister System for the electronic transfer of securities and other financial products operated by ASTC.

Companies Act the *Companies Act 1981* of Bermuda.

Conditions Precedent the conditions precedent set out in clause 3.1 of the Scheme Implementation Agreement.

Court the Supreme Court of New South Wales, Australia.

CPPIB Canada Pension Plan Investment Board.

Deed Poll the deed poll dated 4 May 2009 executed by CPPIB and Bidder in favour of Scheme Participants.

Effective when used in relation to the Schemes, all of the following events taking place:

- (1) the order of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to the MCIL Share Scheme coming into effect pursuant to section 411(10) of the Corporations Act;
- (2) the order of the Bermuda Court made under section 99(2) of the Companies Act in relation to the MMCGIL Share Scheme coming into effect pursuant to section 99(3) of the Companies Act; and
- (3) the Supplemental Deed making amendments to this constitution to facilitate the Trust Scheme, including the insertion of clause 32, taking effect pursuant to section 601GC(2) of the Corporations Act.

Effective Date the date on which all the Schemes have become Effective.

Implementation Date the fifth Business Day after the Scheme Record Date.

Macquarie Transaction the meaning given to that term in the Scheme Implementation Agreement.

MCIL Macquarie Communications Infrastructure Limited (ABN 18 084 388 983).

MCIL Register the register of MCIL Shareholders maintained by MCIL pursuant to Chapter 2C of the Corporations Act.

MCIL Scheme Share each MCIL Share on issue as at 7.00pm on the Scheme Record Date, other than MCIL Shares held by MCIML

MCIL Scheme Shareholder each MCIL Shareholder as at 7.00pm on the Scheme Record Date, other than MCIML.

MCIL Share one fully paid ordinary share issued in the capital of MCIL.

MCIL Share Scheme the scheme of arrangement pursuant to Part 5.1 of the Corporations Act between MCIL and MCIL Shareholders (other than MCIML), under which Bidder acquires all of the MCIL Shares (other than those held by MCIML), together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by CPPIB and Target.

MCIL Share Scheme Meeting the meeting of MCIL Shareholders (other than MCIML) convened by order of the Court in relation to the MCIL Share Scheme pursuant to section 411(1) of the Corporations Act, and includes any adjournment of such meeting.

MCIL Shareholder a person who is registered in the MCIL Register as the holder of MCIL Shares, and **MCIL Shareholders** means all of them.

MCIML Macquarie Communications Infrastructure Management Limited (ABN 29 066 047 738), in its personal capacity.

MMCGIL Macquarie MCG International Limited (ARBN 112 652 490), a company incorporated in Bermuda with registration number 35258.

MMCGIL Register the register of MMCGIL Shareholders maintained by MMCGIL pursuant to section 65 of the Companies Act.

MMCGIL Scheme Share each MMCGIL Share on issue as at 7.00pm on the Scheme Record Date, other than MMCGIL Shares held by MCIML

MMCGIL Scheme Shareholder each MMCGIL Shareholder as at 7.00pm on the Scheme Record Date, other than MCIML.

MMCGIL Share one fully paid ordinary share issued in the capital of MMCGIL.

MMCGIL Share Scheme the scheme of arrangement pursuant to section 99 of the Companies Act between MMCGIL and MMCGIL Shareholders (other than MCIML) under which Bidder acquires all of the MMCGIL Shares (other than those held by MCIML), together with any alterations or conditions made or required by the Bermuda Court and approved in writing by CPPIB and Target.

MMCGIL Share Scheme Meeting the meeting of MMCGIL Shareholders (other than MCIML) convened by the Bermuda Court in relation to the MMCGIL Share Scheme pursuant to section 99(1) of the Companies Act, and includes any adjournment of such meeting.

MMCGIL Shareholder a person who is registered in the MMCGIL Register as the holder of MMCGIL Shares, and **MMCGIL Shareholders** means all of them.

Registered Address in relation to a Securityholder, the address of the Securityholder as recorded in the Register.

Registry Computershare Investor Services Pty Limited (ABN 48 078 279 277) of Level 3, Carrington Street, Sydney NSW 2000, Australia.

Scheme Consideration for each Security held by a Scheme Participant at 7.00pm on the Scheme Record Date, an amount of \$2.50.

Scheme Implementation Agreement the agreement of that name dated 31 March 2009 executed by MMCGIL acting in its own capacity, MCIL acting in its own capacity, Manager acting in its capacity as responsible entity of Trust and CPPIB.

Scheme Participant each person who participates in each of the MMCGIL Share Scheme, the MCIL Share Scheme and the Trust Scheme by virtue of being a MMCGIL Scheme Shareholder, a MCIL Scheme Shareholder and a Scheme Unitholder.

Scheme Record Date the fifth Business Day following the Effective Date, or such other date (after the Effective Date) as Target and CPPIB may agree in writing.

Scheme Security one MMCGIL Scheme Share, one MCIL Scheme Share and one Scheme Unit.

Scheme Transfer for each Scheme Participant, a proper instrument of transfer of their Scheme Securities for the purpose of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Securities.

Scheme Unitholder each person who is a Unitholder as at 7.00pm on the Scheme Record Date, other than MCIML.

Scheme Unit each Unit on issue as at 7.00pm on the Scheme Record Date, other than those held by MCIML.

Schemes the Share Schemes and the Trust Scheme.

Securityholder for the purposes of clause 32, each person who is registered in the Register as the holder of Securities.

Share Scheme Meetings the MMCGIL Share Scheme Meeting and the MCIL Share Scheme Meeting.

Share Schemes the MMCGIL Share Scheme and the MCIL Share Scheme.

Supplemental Deed the deed poll dated [#INSERT DATE] made by Manager in relation to amendment of this constitution.

Target together, MMCGIL, MCIL and the Trust (acting through Manager in its capacity as responsible entity of the Trust), or any of them as the context requires. For the avoidance of doubt, no security in Manager will become subject to the Schemes or any other transaction referred to in this constitution or the Scheme Implementation Agreement except for the Macquarie Transaction.

Target Register the stapled security register of Target kept pursuant to the Corporations Act and the Companies Act.

Trust Scheme the arrangement by which all of the Scheme Units will be transferred to Bidder for the Scheme Consideration, as provided for in the Scheme Implementation Agreement and set out in clause 32.

Trust Scheme Meeting the meeting of Unitholders held on 17 June 2009 convened by Manager pursuant to clause 17.1 of this constitution to consider the Trust Scheme Resolutions, and includes any adjournment of that meeting.

Trust Scheme Resolutions the resolutions of Unitholders set out in the notice of meeting of Unitholders dated 4 May 2009, including:

- (1) a resolution for the purposes of item 7 of section 611 of the Corporations Act to approve the acquisition of all the Scheme Units by Bidder; and
- (2) a resolution for the purposes of section 601GC(1) of the Corporations Act to approve amendments to this constitution as set out in the Supplemental Deed.

Unitholder each person who is registered in the Register as the holder of Units, and Unitholders means all of them.

(f) by inserting a new clause 32 as set out below:

32 Trust Scheme

32.1 Dealings in Units

- (a) For the purpose of establishing the persons who are Scheme Unitholders, dealings in Units will only be recognised if:
 - (i) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Register as the holder of the relevant Units by 7.00pm on the Scheme Record Date; and
 - (ii) in all other cases, registrable transfers or transmission applications in respect of those dealings are received at the Registry by 7.00pm on the Scheme Record Date.
- (b) Manager will register registrable transfers or transmission applications of the kind referred to in clause 32.1(a)(ii) by, or as soon as practicable after, the Scheme Record Date. The persons shown in the Register, and the number of Units shown as being held by them, after registration of those transfers and transmission applications will be taken to be the Scheme Unitholders, and the number of Units held by them, as at 7.00pm on the Scheme Record Date.
- (c) Manager will not accept for registration, nor recognise for any purpose (including the purpose of establishing the persons who are Scheme Unitholders), any transfer or transmission application in respect of

Scheme Units received after 7.00pm on the Scheme Record Date (or received prior to the Scheme Record Date but not in registrable form).

- (d) Manager will maintain, or procure the maintenance of, the Register in accordance with this clause 32.1. The Register immediately after registration of registrable transfers or transmission applications of the kind referred to in clause 32.1(a)(ii), and the terms of the Trust Scheme, will solely determine the persons who are Scheme Unitholders and their entitlements to the Scheme Consideration.
- (e) Other than Bidder (after registration of Bidder in respect of all Scheme Units under clause 32.3(c)), no Scheme Unitholder (or any person purporting to claim through any Scheme Unitholder) may deal with Scheme Units in any way after 7.00pm on the Scheme Record Date except as set out in this clause 32, and any attempt to do so will have no effect.
- (f) Other than in respect of Bidder (after registration of Bidder in respect of all Scheme Units under clause 32.3(c)), from the Scheme Record Date, all unit certificates and holding statements (as applicable) for Scheme Units as at 7.00pm on the Scheme Record Date will cease to have any effect as evidence of title, and each entry on the Register as at 7.00pm on the Scheme Record Date will cease to have any effect other than as evidence of the entitlements of Scheme Unitholders to the Scheme Consideration.
- (g) As soon as practical after the Scheme Record Date, and in any event at least five Business Days before the Implementation Date, Manager must give to CPPIB, or procure that CPPIB is given, details of the names and addresses shown in the Register of all Scheme Unitholders and of the number of Scheme Units held by each of them as at 7.00pm on the Scheme Record Date, in whatever form CPPIB or Bidder reasonably requires in order to implement the Schemes (including to facilitate the provision by Bidder of the Scheme Consideration).

32.2 Scheme Consideration

- (a) The obligations of CPPIB and Bidder to pay the Scheme Consideration under the Deed Poll will be satisfied by CPPIB or Bidder, before 12.00 noon on the Implementation Date, depositing or procuring the deposit of the Aggregate Scheme Consideration into an account nominated by Target (the details of which must be notified by Target to CPPIB at least five Business Days before the Implementation Date).
- (b) Manager is to procure that the amount referred to in clause 32.2(a) be held by Target on trust for the Scheme Participants (except that any interest on the amount will be for the account of Bidder) for the purpose of sending the Scheme Consideration to the Scheme Participants, within one Business Day after the Implementation Date:
 - (i) where the Scheme Participant has nominated (by notice to Manager or the Registry before 7.00pm on the Scheme Record Date) a bank account with an ADI in Australia for the purpose of payment of any dividends or distribution or the Scheme Consideration, then by depositing, or by procuring the deposit of, directly to that bank account, an amount; or
 - (ii) dispatching or procuring the dispatch to each Scheme Participant by pre-paid post to their Registered Address a cheque drawn on an ADI in the name of that Scheme Participant for an amount,

in Australian currency, equal to the number of Securities held by that Scheme Participant as at 7.00pm on the Scheme Record Date, multiplied by the Scheme Consideration (subject to any rounding pursuant to clause 32.2(c)). (For the avoidance of doubt, each Scheme Participant will only be entitled to receive one payment of the Scheme Consideration applicable to the number of Securities held by that Scheme Participant as at 7.00pm on the Scheme Record Date, which payment will apply in respect of all of the Schemes.)

- (c) If a fractional entitlement to part of a cent in cash arises from the calculation of the total amount of cash to be paid to a Scheme Participant, then any such fractional entitlement will be rounded:
 - (i) where the fraction is 0.5 or more – up; and
 - (ii) where the fraction is less than 0.5 – down,to the nearest whole cent.
- (d) In the case of joint holders of Securities, a cheque shall be payable to those joint holders and shall be forwarded to the holder whose name appears first in the Register as at 7.00pm on the Scheme Record Date.
- (e) In the event that the Target believes that a Scheme Participant is not known at the Scheme Participant's Registered Address, and no account has been notified in accordance with clause 32.2(b)(i) or a deposit into such an account is rejected or refunded, the Target may credit the amount payable to the relevant Scheme Participant to a separate bank account of Target to be held until the Scheme Participant claims the amount or the amount is dealt with in accordance with any applicable unclaimed money legislation. Target must hold the amount on trust, but any interest accruing on the amount will be for the account of Bidder. An amount credited to the account is to be treated as having been paid to the Scheme Participant when credited to the account. Target must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.
- (f) In the case of a notice having been given to Manager (or the Registry) of an order made by a court of competent jurisdiction:
 - (i) which requires payment to a third party of a sum in respect of Securities held by a particular Scheme Participant, which would otherwise be payable to the particular Scheme Participant in accordance with clause 32.2(b), then Manager shall procure that payment is made in accordance with that order; or
 - (ii) which would prevent Target from despatching payment to any particular Scheme Participant in accordance with clause 32.2(b), Manager shall procure that Target (or Registry) retains an amount that would otherwise be payable to that Scheme Participant in accordance with clause 32.2(b) until such time as payment is permitted by law (and any interest accruing on the amount will be for the account of Bidder).

32.3 Transfers to Bidder

- (a) On the Implementation Date, subject to CPPIB and Bidder paying the Scheme Consideration in accordance with clause 32.2 and CPPIB providing Manager with written confirmation of that payment:
 - (i) all of the Scheme Units together with all rights and entitlements attaching to the Scheme Units as at the

Implementation Date will be transferred to Bidder without the need for any further act by any Scheme Unitholder (other than acts performed by Manager (or its directors or officers) as attorney or agent of the Scheme Unitholders under clause 32.4 or otherwise) and must be transferred to Bidder simultaneously with the transfer of all of the MMCGIL Scheme Shares and MCIL Scheme Shares to Bidder under the Share Schemes; and

- (ii) Manager will procure:
 - (A) in the case of Scheme Units in a CHES holding, a message to be transmitted to ASTC in accordance with ASTC Settlement Rules so as to transfer to Bidder the Scheme Units held by the Scheme Unitholder from the CHES sub-register of Target to the issuer sponsored sub-register operated by Target; and
 - (B) the delivery to Bidder of transfers of all the Scheme Units to Bidder duly completed and executed on behalf of the Scheme Unitholders, in the form of Scheme Transfers which together with transfers pursuant to the MCIL Share Scheme and the MMCGIL Share Scheme transfer all of the Scheme Securities to Bidder.
- (b) CPPIB must procure that Bidder, and Bidder must, immediately execute the transfers referred to in clause 32.3(a)(ii) as transferee by executing the Scheme Transfers as transferee and delivering the Scheme Transfers to Manager for registration.
- (c) Manager must, immediately following receipt of the transfers under clause 32.3(b) (in the form of Scheme Transfers in respect of the Scheme Securities), enter the name and address of Bidder in:
 - (i) the Register in respect of all the Scheme Units; and
 - (ii) the Target Register in respect of all Securities.

32.4 Covenants by Manager and Unitholders

- (a) Each Scheme Unitholder and Manager must do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the Trust Scheme and the transactions contemplated by it.
- (b) Each Scheme Unitholder irrevocably:
 - (i) acknowledges that this clause 32 binds Manager and all of the Unitholders from time to time (including those who do not attend the Trust Scheme Meeting, do not vote at that meeting or vote against the Trust Scheme Resolutions);
 - (ii) agrees to the transfer of all of their Scheme Units, together with all rights and entitlements attaching to those Scheme Units, to Bidder in accordance with this clause 32;
 - (iii) agrees to the modification or variation (if any) of the rights attaching to their Scheme Units arising from this clause 32;
 - (iv) without the need for any further act, appoints Manager and each of its directors and officers, jointly and severally, as that Scheme Unitholder's attorney and agent (and Manager and each of its directors and officers accepts that appointment) for the purpose of executing any document or

doing any other act necessary to give full effect to the Trust Scheme, the MCIL Share Scheme and the MMCGIL Share Scheme, this clause 32, and the transactions contemplated by each of them, including:

- (A) in the case of Scheme Units in a CHESSE holding, causing a message to be transmitted to ASTC in accordance with ASTC Settlement Rules so as to transfer to Bidder the Scheme Units held by the Scheme Unitholder from the CHESSE sub-register of Target to the issuer sponsored sub-register operated by Target notwithstanding that, at the time of such transfer, the Scheme Consideration that is due under this clause 32 has not been provided to the Scheme Unitholders; and
 - (B) executing a proper instrument of transfer of its Scheme Units for the purposes of section 1071B of the Corporations Act which may be a master transfer of all Securities;
- (v) consents to Manager, CPPIB and Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the Trust Scheme, the MCIL Share Scheme and the MMCGIL Share Scheme, this clause 32 and the transactions contemplated by them; and
- (vi) appoints Manager to enforce the Deed Poll against CPPIB and/or Bidder on behalf of and as agent and attorney for the Scheme Unitholder.
- (c) From the Implementation Date, subject to CPPIB or Bidder paying the Scheme Consideration in accordance with clause 32.2 and CPPIB providing Manager with written confirmation of that payment, until Manager registers Bidder as the holder of all Scheme Units in the Register, each Scheme Unitholder is deemed to have appointed Bidder and each of its directors and officers, jointly and severally, as its attorney and agent (and directed Bidder and its directors and officers in such capacity) to appoint the Chairman of Bidder (or other nominee of CPPIB) as its sole proxy and, where applicable, corporate representative to attend unitholder meetings of the Trust and shareholder meetings of MCIL and MMCGIL, exercise the votes attaching to the Scheme Units, MCIL Scheme Shares and the MCIL Scheme Shares of which they are the registered holder and sign any Unitholders' resolution, MCIL Shareholders' resolution or MMCGIL Shareholders' resolution, and no Scheme Unitholder, MCIL Scheme Shareholder or MMCGIL Scheme Shareholder (as applicable) may attend or vote at any of those meetings or sign or vote on any resolutions (whether in person, by proxy or by corporate representative) other than pursuant to this clause 32.4(c). Bidder undertakes in favour of each Scheme Unitholder that it will appoint the Chairman of Bidder (or other nominee of CPPIB) as proxy or, where applicable, corporate representative for the relevant Scheme Unitholder, MCIL Scheme Shareholder or MMCGIL Scheme Shareholder in accordance with this clause 32.4(c).
- 32.5 Status of Scheme Units
- (a) To the extent permitted by law, the Scheme Units transferred to Bidder under this clause 32 will be transferred free from all mortgages,

charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.

- (b) The Scheme Unitholders are deemed to have warranted to Manager, CPPIB and to Bidder, that all their Scheme Units (including any rights and entitlements attaching to those Scheme Units) which are transferred to Bidder under this clause 32 will, at the time they are transferred to Bidder, be fully paid and free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind not referred to in this constitution (other than that they must be transferred together with the other securities comprising a Security), and that they have full power and capacity to sell and to transfer their Scheme Units (including any rights and entitlements attaching to those Scheme Units).
- (c) Bidder will be beneficially entitled to the Scheme Units transferred to it under this clause 32 pending registration by Manager of the name and address of Bidder in the Register as the holder of the Scheme Units.

32.6 Effect of clause 32

This clause 32:

- (a) binds Manager and all Unitholders, including those who do not attend the Trust Scheme Meeting, those who do not vote at that meeting and those who vote against the Trust Scheme Resolutions at that meeting; and
- (b) overrides the other provisions of this constitution to the extent of any inconsistency, except clauses 24.2 and 27.

32.7 Manager's limitation of liability

Without limiting clauses 19.1 and 19.2, subject to the Corporations Act, Manager will not have any liability of any nature whatsoever beyond the assets of the Trust to Unitholders arising, directly or indirectly, from Manager doing or refraining from doing any act (including the execution of a document), matter or thing pursuant to or in connection with the implementation of the Trust Scheme.

- (g) by inserting a new clause 33 as set out below:

33 Interpretation of Supplemental Deed amendments

- (a) The following rules apply in interpreting the amendments to this constitution as set out in the Supplemental Deed, except where the context otherwise requires:
 - (i) the singular includes the plural and vice versa, and a gender includes other genders;
 - (ii) another grammatical form of a defined word or expression has a corresponding meaning;
 - (iii) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
 - (iv) a reference to an agreement, document or instrument (including to this deed, and to any regulatory guide, standard or guidance note) includes the agreement, document or instrument as novated, amended, altered, supplemented or replaced from time to time;

- (v) a reference to **A\$, AUD, dollar** or **\$** is to Australian currency;
- (vi) a reference to time is to Sydney, Australia time;
- (vii) if a time period is specified and dates from a given date or the day of an act or event, it is to be calculated exclusive of that day;
- (viii) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (ix) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (x) a reference to a person, natural person, trust, partnership, body corporate, association, unincorporated body, governmental or local authority or agency or other entity includes any of them;
- (xi) a reference to a statute, ordinance, code or other law, or regulation, includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (xii) a word or expression defined in either the Corporations Act or the Companies Act (as applicable) has the corresponding meaning given to it in the Corporations Act or Companies Act;
- (xiii) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (xiv) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (xv) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (xvi) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it;
- (xvii) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (xviii) a reference to amend includes delete or replace.

Freehills

- (b) For the avoidance of doubt, clause 31.2 of this constitution does not apply in interpreting the amendments to this constitution as set out in the Supplemental Deed.

4 Pre-existing rights

Except as specifically provided under this deed, nothing in this deed:

- (a) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Constitution before the date of this deed;
- (b) discharges releases or otherwise affects any liability or obligation arising under the Constitution before the date of this deed.

5 No resettlement

The Manager confirms that it is not by this deed intending to:


- (a) resettle or redeclare the Trust declared under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Trust in any person.

6 Governing law

This deed will be governed by the laws of the State of New South Wales, Australia.

Executed as a deed

Signed sealed and delivered for
Macquarie Communications Infrastructure Management Limited
by ~~him~~/its attorney

sign here ▶ 
Attorney Leanne Pickering
print name _____

in the presence of

sign here ▶ 
Witness David Handelsmann
print name _____
