

# ASX/MEDIA RELEASE

Date: 15 March 2016

## ASCIANO ANNOUNCES TRANSACTION WITH BROOKFIELD CONSORTIUM AND QUBE CONSORTIUM

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Asciano Limited (**Asciano**) (ASX:AIO, OTCUS:AIOYY) previously announced on 23 February 2016 that it had received letters regarding preliminary discussions between Asciano and each of:

- Brookfield Infrastructure Partners L.P. (and certain of its affiliates) (**Brookfield**), GIC Private Limited (and certain of its affiliates) (**GIC**) and British Columbia Investment Management Corporation (**bcIMC**) (together, the **Brookfield Consortium**); and
- Qube Holdings Limited (**Qube**), Canada Pension Plan Investment Board (**CPPIB**), Global Infrastructure Management, LLC (on behalf of itself and its managed funds and clients) (**GIP**) and CIC Capital Corporation (**CIC Capital**) (together, the **Qube Consortium**).

Since the time of these letters, Qatar Investment Authority has also joined the Brookfield Consortium.

The discussions related to a potential transaction under which the Brookfield Consortium and the Qube Consortium would together facilitate the acquisition by way of scheme of arrangement of 100% of the issued share capital of Asciano for \$9.28 cash per share, reduced by the cash value of any interim and/or special dividend paid by Asciano after that announcement date (**Joint Consortium Scheme**).

### Transaction Overview

Asciano today announces that it has entered into binding documentation with the Brookfield Consortium and Qube Consortium in relation to the Joint Consortium Scheme including an implementation deed (**Scheme Implementation Deed**) and sale agreements in relation to Patrick's container terminal business (**Ports**) and the Bulk & Automotive Port Services business (**BAPS**).

Under the Scheme Implementation Deed, it is proposed that a vehicle (**BidCo**) owned directly or indirectly by CPPIB, GIP, CIC Capital, GIC and bcIMC (**Rail Consortium**), will acquire 100% of the issued capital of Asciano at \$9.15 cash per Asciano share (reduced by the cash value of any permitted special dividend) (**Scheme Consideration**). The \$9.15 Scheme Consideration represents the \$9.28 per share announced on 23 February 2016, reduced by the amount of the interim dividend of \$0.13 per share declared by Asciano on 24 February 2016 which is payable on 24 March 2016. The

combined value of the \$9.15 Scheme Consideration and the \$0.13 interim dividend per Asciano share implies an enterprise value of approximately \$12.0 billion.

The Asciano Board has considered the Joint Consortium Scheme in the context of the previously announced Qube Consortium proposal and unanimously recommends that Asciano shareholders vote in favour of the Joint Consortium Scheme in respect of all of their Asciano shares, subject to:

- Asciano not receiving a superior proposal; and
- an independent expert opining that the Joint Consortium Scheme is in the best interests of Asciano shareholders.

### Termination of Qube Consortium proposal

As a result of its recommendation of the Joint Consortium Scheme, the transaction documentation entered into under the previously announced Qube Consortium proposal, including the Qube Consortium Bid Implementation Deed and associated sale agreements, has been terminated by mutual agreement.

No break fee is payable by Asciano with respect to the termination of Qube Consortium proposal transaction documentation or the Asciano Board's support for the Joint Consortium Scheme.

### Overview of the Joint Consortium Scheme

The Joint Consortium Scheme involves the Rail Consortium (through BidCo) acquiring 100% of the issued share capital of Asciano. If the Scheme is implemented, Asciano Shareholders will receive the Scheme Consideration of \$9.15 cash per share (reduced by the cash value of any permitted special dividend). In addition, Asciano shareholders eligible on the interim dividend record date will be entitled to retain the \$0.13 interim dividend declared on 24 February 2016 and that will be paid to shareholders on 24 March 2016.

As permitted under the Scheme Implementation Deed, if the transaction proceeds and ATO approval is obtained, Asciano expects to pay a fully franked special dividend of up to \$0.90 per share before the Scheme Implementation Date (**Special Dividend**). To the extent that a Special Dividend is paid, the cash component of the Joint Consortium Scheme consideration will be reduced by the amount of the Special Dividend.

The combined value of the \$9.15 Scheme Consideration and the \$0.13 interim dividend per share (excluding the potential benefit of franking credits associated with the interim dividend or Special Dividend) represents a 41.0% premium to the undisturbed volume weighted average price (**VWAP**) of Asciano Shares during the five trading days leading up to and including 30 June 2015<sup>1</sup> of \$6.58 and an EV/EBITDA multiple of 10.5x for the twelve months ended 31 December 2015. The Scheme Consideration of \$9.15, represents a 39.0% premium to the undisturbed VWAP of Asciano Shares during the five trading days leading up to and including 30 June 2015<sup>2</sup> of \$6.58 and an EV/EBITDA multiple of 10.4x for the twelve months ended 31 December 2015.

The value of the franking credits associated with the interim dividend and Special Dividend are up to approximately \$0.05 per share and up to approximately \$0.39 per share respectively. Those shareholders who can capture the full benefit of the franking credits associated with both the interim

<sup>1</sup> The day prior to Asciano confirming to the ASX that it had received a non-binding indicative proposal from Brookfield regarding the initial Brookfield scheme proposal.

<sup>2</sup> The day prior to Asciano confirming to the ASX that it had received a non-binding indicative proposal from Brookfield regarding the initial Brookfield scheme proposal.

dividend and the Special Dividend may receive an additional benefit valued at up to approximately \$0.44 per share.<sup>3</sup>

Under the Joint Consortium Scheme:

- the Rail Consortium (through BidCo) will acquire all of the shares in Asciano, and with it the Pacific National rail business of Asciano;
- Asciano's Patrick business will be acquired from Asciano for \$3.84 billion (on a cash and debt free basis) as follows:
  - a terminals joint venture comprising of Qube and the Brookfield Consortium (or entities controlled by them) (**Terminals JV**) would acquire 100% of Asciano's Ports business for \$2.915 billion;
  - the Brookfield Consortium (or entities controlled by them) would acquire 100% of the BAPS business (including the 50% interest in Australian Amalgamated Terminals (**AAT**), the related shareholder loans provided by Asciano to AAT and the 50% interest in the ACFS Port Logistics joint venture) for \$925 million (less debt assumed by the acquirer); and
  - the sales referred to above would be conditional upon the Joint Consortium Scheme becoming effective; and
- the relevant Qube and Brookfield entities would sell their existing Asciano shareholdings to BidCo at the scheme consideration price, through transfer agreements conditional upon the Joint Consortium Scheme becoming effective.

The Joint Consortium Scheme is subject to a number of conditions precedent including (among others):

- Asciano shareholder approval;
- Receipt of regulatory approvals, including ACCC, OIO, FIRB, ASX<sup>4</sup> and under the EU Merger Regulations, if required;
- An independent expert opining that the Joint Consortium Scheme is in the best interests of Asciano shareholders;
- Certain third party consents to the change of control of Asciano;
- No Asciano "material adverse change" or "prescribed occurrence" occurring; and
- Court approval.

Under the Scheme Implementation Deed, Asciano will be bound by customary exclusivity provisions including "no shop", "no talk", "notification" and "matching" obligations. A break fee of \$88 million will be payable to the Qube Consortium by Asciano in certain circumstances.

A full copy of the Scheme Implementation Deed, including all applicable conditions, is attached to this announcement.

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<sup>3</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>4</sup> Australian Competition and Consumer Commission; Overseas Investment Office (New Zealand); Foreign Investment Review Board (Australia); Australian Securities Exchange, respectively.

## ASIC Relief

ASIC has granted 'joint scheme relief' to the Joint Acquirers<sup>5</sup> which enables them to enter into the Framework Deed in relation to the Joint Consortium Scheme, even though entering into that agreement will give each Joint Acquirer a relevant interest in approximately 40% of Asciano shares.

That relief is subject to a number of conditions, including a standard ASIC condition that if, after the announcement of the Joint Consortium Scheme and prior to its implementation or termination, a rival takeover bid is announced at a price which is 105% or more than the consideration under the Joint Consortium Scheme, then the Joint Acquirers will have 7 days after that rival takeover bid goes unconditional to either match or accept that higher rival offer for all of the shares they hold in Asciano. If such higher rival bid is structured as a scheme of arrangement rather than a takeover bid, and Asciano changes its recommendation in favour of that higher rival scheme, then the Joint Acquirers will be precluded from voting the shares they hold against that higher rival scheme. That relief is also subject to a standard ASIC condition that the Framework Deed must immediately terminate if the Joint Consortium Scheme is terminated for any reason.

ASIC has also granted relief to the Qube Consortium members from any obligation which they may have under section 631 of the Corporations Act to make a takeover bid for Asciano on the terms described in the previous Qube Consortium takeover proposal within 2 months of the announcement of that proposal, on the basis that the previous Qube Consortium takeover proposal is being replaced by the new Joint Consortium Scheme proposal. Under the terms of the ASIC relief, the Qube Consortium could be required to proceed with that takeover proposal if the Joint Consortium Scheme is terminated for any reason, but would not be required to do so unless Asciano had at that time entered into a new bid implementation agreement and share purchase agreements in the same or substantially the same form as those entered into with the Qube Consortium at the time of announcement of the previous proposal.

## Indicative Timetable and Next Steps

It is anticipated that a Scheme Booklet in relation to the proposed Joint Consortium Scheme will be sent to Asciano shareholders in early May 2016. Asciano shareholders are expected to meet to vote on the Scheme in early June 2016.

An indicative timetable for the Joint Consortium Scheme is set out below:

<b>Event</b>	<b>Expected Date</b>
Lodge Scheme Booklet and Independent Expert's Reports with ASIC for review	Early April 2016
First Court Hearing Date	Late April 2016
Dispatch of Scheme Booklet	Early May 2016
Scheme Meeting	Early June 2016
Second Court Hearing	Early June 2016
Effective Date	Early June 2016

<sup>5</sup> The 'Joint Acquirers' are: Qube Holdings Limited; Brookfield Infrastructure Partners Limited as general partner of Brookfield Infrastructure Partners L.P. ("Brookfield"); BIF II GP Bermuda Limited as general partner of BIF II Nitro AIV (Bermuda) LP; Global Infrastructure Management Australia Pty Limited in its capacity as trustee of the GIP Bell Australia Unit Trust; Perpetual Corporate Trust Limited in its capacity as trustee of the CPPIB Australia Trust; Beijing Shunrong Investment Corporation; bcIMC Nitro Trustee Inc., in its capacity as trustee of the bcIMC Nitro Investment Trust; Asciano Investment Company; and Buckland Investment Pte Ltd.

Special Dividend Record Date	Mid June 2016
Special Dividend Payment Date	Late June 2016
Scheme Record Date	Late June 2016
Implementation Date	Late June 2016

### Further information

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:

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– Ends –

## Scheme Implementation Deed

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**This Deed** is made on 15 March 2016

#### Parties

- 1 **Global Infrastructure Management Australia Pty Limited** (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**).
- 2 **Canada Pension Plan Investment Board**, a Canadian Crown corporation of One Queen Street East, Suite 2500, Toronto, Ontario, Canada M5C 2WC (**CPPIB**).
- 3 **Beijing Shunrong Investment Corporation** of 1939, 19/F, No. 1 Chaoyangmen Beidajie, Dongcheng District, Beijing, 100010, China (**Shunrong**).
- 4 **Buckland Investment Pte Ltd** of 168 Robinson Road #37-01 Capital Tower Singapore 068912 (**GIC**).
- 5 **bclMC Nitro Trustee Inc.**, in its capacity as trustee of the **bclMC Nitro Investment Trust** of Suite 300, 2950 Jutland Road, Victoria, British Columbia, V8T 5K2 Canada (**bclMC**).
- 6 **Brookfield Infrastructure Partners Limited (BIPL)** as general partner of **Brookfield Infrastructure Partners LP (BIP)** of 73 Front Street Hamilton, HM 12, Bermuda and **BIF II GP Bermuda Limited** as general partner (**BIF II GP**) of **BIF II Nitro AIV (Bermuda) LP (BIF II)** of 73 Front Street Hamilton, HM 12, Bermuda (collectively **Brookfield**).
- 7 **Asciano Investment Company** of Q-Tel Tower, Diplomatic Area Street, West Bay, Doha, Qatar (**QH Investco**).
- 8 **Qube Holdings Limited** (ACN 149 723 053) of Level 27, 45 Clarence Street Sydney NSW 2000 (**Qube**).
- 9 **Asciano Limited** (ACN 123 652 862) of Level 6, 15 Blue Street North Sydney, NSW 2060 (**Asciano**).

#### Recitals

- A The Rail Consortium (via BidCo) proposes to:
- (i) acquire all of the Asciano Shares (other than the 379,863,196 Asciano Shares held by the Excluded Shareholders) by means of the Scheme; and
  - (ii) acquire the 379,863,196 Asciano Shares held by the Excluded Shareholders by means of the Conditional Transfer Agreements,
- for a consideration of A\$9.15 per Asciano Share, less the amount of the Asciano Permitted Special Dividend on a per Asciano Share basis. Asciano will also be permitted to pay the Asciano Interim Dividend of A\$0.13 per Asciano Share as announced by Asciano to the ASX on 24 February 2016, with no reduction to the Scheme Consideration.
- B The parties have agreed that Asciano may pay to Asciano Shareholders a fully franked Asciano Permitted Special Dividend of up to A\$0.90 per Asciano Share, such dividend to be paid on the Special Dividend Payment Date, which is after the Effective Date of the Scheme and prior to the Scheme Record Date.
- C Immediately prior to implementation of the Scheme:
- (i) Asciano will sell, and the Ports Consortium (via Ports HoldCo) will purchase, the holding

company of the Ports Businesses on the terms of the Ports SPA, such acquisition to be conditional on the Scheme becoming Effective; and

- (ii) Asciano will sell, and the BAPS Consortium (via BAPS HoldCo) will purchase, the holding company of the BAPS Businesses on the terms of the BAPS SPA, such acquisition to be conditional on the Scheme becoming Effective.

**It is agreed** as follows.

## **1 Definitions and interpretation**

### **1.1 Definitions**

The meanings of the terms used in this deed are set out in Schedule 1.

### **1.2 Interpretation**

Schedule 1 contains interpretation rules for this deed.

### **1.3 Deed components**

This deed includes any schedule to it.

## **2 Agreement to proceed with the Transactions**

- (a) Asciano agrees to propose the Scheme on and subject to the terms and conditions of this deed.
- (b) The Rail Consortium agrees to:
  - (i) assist Asciano to propose the Scheme; and
  - (ii) procure BidCo to assist Asciano to propose the Scheme, on and subject to the terms and conditions of this deed.
- (c) The Ports Consortium and BAPS Consortium agree to assist Asciano to propose the Scheme, on and subject to the terms and conditions of this deed.
- (d) The parties agree to implement the Transactions on and subject to the terms and conditions of this deed and the Sale Agreements to which they are party.

## **3 Conditions Precedent and pre-implementation steps**

### **3.1 Conditions Precedent**

Subject to this clause 3, the Scheme will not become Effective, and the obligations of the Rail Consortium and BidCo under clause 4.4 are not binding, until each of the following Conditions Precedent is satisfied or waived to the extent and in the manner set out in this clause 3.

- (a) **Regulatory Approvals:** Before 8.00am on the Second Court Date:
  - (i) **FIRB:**
    - (A) **(Acquisition of Asciano Shares)** Either:
      - (1) the Treasurer of the Commonwealth of Australia (or his delegate) provides written notice to the Rail Consortium that there are no objections under the FATA to the acquisition by BidCo of the Asciano Shares under the Scheme and the Conditional Transfer Agreements, and of any direct or indirect investment by the Rail Consortium Members or their respective Related Bodies

Corporate in BidCo, and that notice is not subject to any conditions; or

- (2) 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 the acquisition by BidCo of the Asciano Shares under the Scheme and the Conditional Transfer Agreements, and of any direct or indirect investment by the Rail Consortium Members or their respective Related Bodies Corporate in BidCo.

(B) **(Acquisition of Ports Businesses)** Either:

- (1) the Treasurer of the Commonwealth of Australia (or his delegate) provides written notice to the Ports Consortium that there are no objections under the FATA to the acquisition by Ports HoldCo of PortsCo under the Ports SPA, and of any direct or indirect investment by the Ports Consortium Members or their respective Related Bodies Corporate in Ports HoldCo, and that notice is not subject to any conditions; or
- (2) 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 the acquisition by Ports HoldCo of PortsCo under the Ports SPA, and of any direct or indirect investment by the Ports Consortium Members or their respective Related Bodies Corporate in Ports HoldCo.

(C) **(Acquisition of BAPS Businesses)** Either:

- (1) the Treasurer of the Commonwealth of Australia (or his delegate) provides written notice to Brookfield that there are no objections under the FATA to the acquisition by BAPS HoldCo of BAPSCo under the BAPS SPA, and of any direct or indirect investment by the BAPS Consortium Members or their respective Related Bodies Corporate in BAPS HoldCo, and that notice is not subject to any conditions; or
- (2) 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 the acquisition by BAPS HoldCo of BAPSCo under the BAPS SPA, and of any direct or indirect investment by the BAPS Consortium Members or their respective Related Bodies Corporate in BAPS HoldCo.

(ii) **ACCC:**

(A) **(Acquisition of Asciano Shares)** Either:

- (1) the Rail Consortium has received informal merger clearance on an unconditional basis, whether or not obtained after the provision of any undertakings or other concessions requested or required by the ACCC to facilitate such clearance, in respect of the acquisition by BidCo of all of the Asciano Shares by notice in writing from the ACCC stating, or stating to the effect, that the

ACCC does not propose to intervene or seek to prevent the acquisition of Asciano Shares by BidCo, or of any direct or indirect investment by the Rail Consortium Members or their respective Related Bodies Corporate in BidCo, and that notice has not been withdrawn, revoked or adversely amended before 8.00am on the Second Court Date; or

- (2) the Rail Consortium 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 Asciano Shares, and of any direct or any indirect investment by the Rail Consortium Members or their respective Related Bodies Corporate in BidCo, and such authorisation, approval, notification or declaration has not been withdrawn, revoked or adversely amended or appealed.

**(B) (Acquisition of Ports Businesses) Either:**

- (1) the Ports Consortium has received informal merger clearance on an unconditional basis, whether or not obtained after the provision of any undertakings or other concessions requested or required by the ACCC to facilitate such clearance, in respect of the acquisition by Ports HoldCo of PortsCo by notice in writing from the ACCC stating, or stating to the effect, that the ACCC does not propose to intervene or seek to prevent the acquisition by Ports HoldCo of PortsCo, or of any direct or indirect investment by the Ports Consortium Members or their respective Related Bodies Corporate in Ports HoldCo, and that notice has not been withdrawn, revoked or adversely amended before 8.00am on the Second Court Date; or
- (2) the Ports Consortium 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 Ports HoldCo of PortsCo, and of any direct or any indirect investment by the Ports Consortium Members or their respective Related Bodies Corporate in Ports HoldCo, and such authorisation, approval, notification or declaration has not been withdrawn, revoked or adversely amended or appealed.

**(C) (Acquisition of BAPS Businesses) Either:**

- (1) the BAPS Consortium has received informal merger clearance on an unconditional basis, whether or not obtained after the provision of any undertakings or other concessions requested or required by the ACCC to facilitate such clearance, in respect of the acquisition by BAPS HoldCo of BAPSCo by notice in writing from the ACCC stating, or stating to the effect, that the ACCC does not propose to intervene or seek to prevent the acquisition by BAPS HoldCo of BAPSCo, or of any direct or indirect investment by the BAPS Consortium Members or their respective Related Bodies Corporate in BAPS HoldCo, and that notice has

not been withdrawn, revoked or adversely amended before 8.00am on the Second Court Date; or

- (2) the BAPS Consortium 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 of any direct or indirect investment by the BAPS Consortium Members or their respective Related Bodies Corporate in BAPS HoldCo, and such authorisation, approval, notification or declaration has not been withdrawn, revoked or adversely amended or appealed.
- (iii) **OIO:**
  - (A) **(Transactions)** The Rail Consortium, Ports Consortium and BAPS Consortium have received all necessary consents, approvals or clearances required under the OIO Legislation in relation to the Transactions, and such consents, approvals or clearances (as the case may be) have not been withdrawn, suspended, revoked or adversely amended before 8.00am on the Second Court Date.
  - (B) **(Acquisition of BAPS Businesses)** The BAPS Consortium has received all consents, approvals or clearances required under the OIO Legislation for the acquisition of BAPSCo, and such consents, approvals or clearances (as the case may be) have not been withdrawn, suspended, revoked or adversely amended before 8.00am on the Second Court Date.
- (iv) **EU Merger Regulation:** If the Relevant Transactions or part of the Relevant Transactions constitutes 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 Relevant Transactions or part thereof compatible with the common market. For this purpose, *Relevant Transactions* means: (i) the acquisition by BidCo of all of the Asciano Shares; and (ii) any direct or indirect investment by the Rail Consortium Members or their respective Related Bodies Corporate in BidCo.
- (v) **ASX waiver:** ASX issues to Asciano a waiver from Listing Rule 10.1 and a confirmation that Listing Rule 11 will not apply (or a waiver of Listing Rule 11) in relation to the Asset Disposals on an unconditional basis (or, failing receipt of such determinations, Asciano Shareholders approve the Asset Disposals under Listing Rules 10.1 and 11), and such determinations have not been withdrawn, suspended, revoked or adversely amended before 8.00am on the Second Court Date.
- (vi) **Other ASIC and ASX approvals:** ASIC and ASX issue or provide all reliefs, waivers, confirmations, exemptions, consents or approvals, and do all other acts, necessary, or which the parties agree are desirable to implement the Transactions and the acquisition of Asciano Shares under the Conditional Transfer Agreements, and such reliefs, waivers confirmations, exemptions, consents, approvals or other acts (as the case may be) have not been withdrawn, suspended or revoked before 8.00am on the Second Court Date.

- (b) **Shareholder approval of the Scheme:** Asciano Shareholders (other than Associated Shareholders) agree to the Scheme at the Scheme Meeting by the requisite majorities under subparagraph 411(4)(a)(ii) of the Corporations Act.
- (c) **Independent Expert:** The Independent Expert issues an Independent Expert's Report which concludes that the Scheme is in the best interest of Asciano Shareholders (other than Associated Shareholders), before the time when the Scheme Booklet is registered by ASIC.
- (d) **Court approval:** The Court approves the Scheme in accordance with paragraph 411(4)(b) of the Corporations Act.
- (e) **Restraints:** Between (and including) the date of this deed and 8.00am on the Second Court Date:
  - (i) there is not in effect any temporary, preliminary or final order, injunction, decision or decree issued by any court of competent jurisdiction or Government Agency;
  - (ii) no action or investigation is announced or commenced by a Government Agency, in consequence of, or in connection with, the Transactions which:
  - (iii) restrains or prohibits (or could restrain or prohibit), or otherwise materially adversely impacts on:
    - (A) the Transactions (whether subject to conditions or not); or
  - (iv) requires the divestiture by any Rail Consortium Member, Ports Consortium Member or BAPS Consortium Member or any of their respective Related Bodies Corporate of:
    - (A) any of their assets; or
    - (B) any shares or assets to be acquired under the Transactions.

unless any such order, injunction, decision, decree, application, action or investigation has been disposed of to the satisfaction of the affected party or parties, or is otherwise no longer effective or enforceable, by 8.00am on the Second Court Date.
- (f) **No Asciano Prescribed Occurrence:** No Asciano Prescribed Occurrence occurs between (and including) the date of this deed and 8.00am on the Second Court Date.
- (g) **No Asciano Material Adverse Change:** No Asciano Material Adverse Change occurs or is reasonably likely to occur, or is discovered, announced, disclosed or otherwise becomes known to a Rail Consortium Member, Ports Consortium Member or BAPS Consortium Member between (and including) the date of this deed and 8.00am on the Second Court Date.
- (h) **Third party consents:** All approvals and consents of a third party which Asciano and each Ports Consortium Member have agreed in the Disclosure Letter given by Asciano to each Ports Consortium Member are necessary to transfer the shares in PortsCo 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 8.00am on the Second Court Date.
- (i) **Sale Agreements:** Each Sale Agreement remains on foot as at 8.00am on the Second Court Date.



**3.2 Reasonable endeavours**

- (a) Asciano must, to the extent it is within its power to do so, use its reasonable endeavours to procure that each of the Conditions Precedent in clauses 3.1(b), 3.1(d), 3.1(f), 3.1(g) and 3.1(h) are satisfied as soon as practicable after the date of this deed and continue to be satisfied at all times until the last time that the relevant clause provides that it is to be satisfied.
- (b) Each party must, to the extent it is within their power to do so, use its reasonable endeavours to procure that the Conditions Precedent in clauses 3.1(e) and 3.1(i) are satisfied as soon as possible after the date of this deed and continue to be satisfied at all times until the last time that the relevant Condition Precedent provides that it is to be satisfied and there is no occurrence within its control or the control of any of its Related Bodies Corporate that would prevent any of the Conditions Precedent, which that party (alone or together with the other applicable parties) must use reasonable endeavours to satisfy, being or remaining satisfied.
- (c) Each BAPS Consortium Member, Ports Consortium Member and Rail Consortium Member must, to the extent it is within their power to do so, use its reasonable endeavours to procure that the Conditions Precedent in clause 3.1(a) (and Asciano, in relation to the Conditions Precedent in clauses 3.1(a)(v) and (vi)) are satisfied as soon as possible after the date of this deed (including 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 Precedent provides that it is to be satisfied and there is no occurrence within its control or the control of any of its Related Bodies Corporate that would prevent any of the Conditions Precedent, which that party (alone or together with the other applicable parties) must use reasonable endeavours to satisfy, being or remaining satisfied.

Asciano must use reasonable endeavours to provide assistance to the BAPS Consortium, Ports Consortium and Rail Consortium in satisfying the Conditions Precedent in clause 3.1(a) and provide information reasonably requested by the BAPS Consortium, Ports Consortium and Rail Consortium to enable each of them to fulfil their respective obligations in this clause 3.2 and in particular, to respond to queries or requests from the ACCC.

- (d) Without limiting this clause 3.2, each party 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 requests for information from the relevant Government Agencies at the earliest practicable time;
  - (iii) promptly provide the other parties with all information reasonably requested in connection with the applications for the Regulatory Approvals, including copies of all communications with Government Agencies 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 other parties with a draft copy of any submission or correspondence; and
  - (v) provide the other parties or the relevant Government Agency with all assistance and information that it reasonably requests in connection with an application for a Regulatory Approval to be lodged by the other parties,



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 Bodies Corporate, 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 party has not promptly responded under clause 3.2(d)(iv).

### 3.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a)(i)(A) and 3.1(a)(iv) are for the sole benefit of the Rail Consortium and may only be waived by the Rail Consortium (in its absolute discretion) in writing.
- (b) The Condition Precedent in clause 3.1(a)(i)(B) is for the sole benefit of the Ports Consortium and may only be waived by the Ports Consortium (in its absolute discretion) in writing.
- (c) The Conditions Precedent in clauses 3.1(a)(i)(C) and 3.1(a)(iii)(B) are for the sole benefit of the BAPS Consortium and may only be waived by the BAPS Consortium (in its absolute discretion) in writing.
- (d) The Conditions Precedent in clauses 3.1(a)(iii)(A), 3.1(f) and 3.1(g) are for the sole benefit of the Rail Consortium, Ports Consortium and BAPS Consortium and may only be waived by the Rail Consortium, Ports Consortium and BAPS Consortium (in their absolute discretion) in writing.
- (e) The Conditions Precedent in clauses 3.1(b) and 3.1(d) cannot be waived.
- (f) The Condition Precedent in clause 3.1(h) is for the sole benefit of the Ports Consortium and may only be waived by the Ports Consortium (in its absolute discretion) in writing.
- (g) The Conditions Precedent in:
  - (i) clause 3.1(a)(ii)(A) is for the benefit of the Rail Consortium and Asciano;
  - (ii) clause 3.1(a)(ii)(B) is for the benefit of the Ports Consortium and Asciano; and
  - (iii) clause 3.1(a)(ii)(C) are for the benefit of the BAPS Consortium and Asciano;
 and may only be waived:
  - (iv) by written agreement between those relevant parties (in their absolute discretion); or
  - (v) in circumstances where:
    - (A) the Condition Precedent is not satisfied solely because any approval given by the ACCC is conditional (rather than unconditional); and
    - (B) the Rail Consortium (in respect of clause 3.1(a)(ii)(A)), the Ports Consortium (in respect of clause 3.1(a)(ii)(B)) or BAPs Consortium (in respect of clause 3.1(a)(ii)(C)) have undertaken to the ACCC that they will comply with all such Conditions,
 by the Rail Consortium, Ports Consortium or BAPs Consortium (as appropriate, in its absolute discretion) in writing.

- (h) The Conditions Precedent in clauses 3.1(a)(v), 3.1(a)(vi), 3.1(c), 3.1(e) and 3.1(i) are for the benefit of all parties, and may only be waived by written agreement between all parties.
- (i) If a party waives the breach or non-satisfaction of any of the Conditions Precedent in clause 3.1, that waiver does not prevent that party from suing the other party for any breach of this deed that resulted in the breach or non-satisfaction of the relevant Condition Precedent.
- (j) Waiver of a breach or non-satisfaction in respect of one Condition Precedent does not constitute:
  - (i) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same event; or
  - (ii) a waiver of breach or non-satisfaction of that Condition Precedent resulting from any other event.

### 3.4 Termination on failure of Condition Precedent

- (a) If:
  - (i) there is an event or occurrence that would, or does, prevent any of the Conditions Precedent being satisfied;
  - (ii) there is an event or occurrence that would, or does, prevent any of the Conditions Precedent being satisfied by the time and date specified in this deed for the satisfaction of that Condition Precedent; or
  - (iii) it becomes more likely than not that the Scheme will not become Effective by the End Date,
 the parties must consult in good faith to:
  - (iv) consider and, if agreed, determine whether the Transactions may proceed by way of alternative means or methods;
  - (v) consider and, if agreed, change the date of the application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed to in writing by the parties (being a date no later than 5 Business Days before the End Date); or
  - (vi) consider and, if agreed, extend the relevant date or End Date.
- (b) Subject to clauses 3.4(d) and 3.4(e), if the parties are unable to reach agreement under clause 3.4(a):
  - (i) within 5 Business Days of becoming aware of the relevant event or occurrence that would, or does, prevent a Condition Precedent being satisfied;
  - (ii) within 5 Business Days of the time and date specified in this deed for the satisfaction of a Condition Precedent; or
  - (iii) by the End Date,

as appropriate, then, unless that Condition Precedent has been waived in accordance with clause 3.3, Asciano (acting individually) or the Rail Consortium, Ports Consortium and BAPS Consortium (acting jointly) may terminate this deed without any liability to the other parties because of that termination. However, a party may not terminate this deed pursuant to this clause 3.4(b) if the relevant occurrence or event, the failure of the Condition Precedent to be satisfied, or the failure of the Scheme to become Effective,

arises out of a breach of clauses 3.2 or 3.5 by that party (and, for the purposes of this clause, such breach by any member of the Rail Consortium, Ports Consortium or BAPs Consortium shall be considered to be a breach by each other member of the Rail Consortium, Ports Consortium and BAPs Consortium, as applicable), although in such circumstances any of the other parties may still terminate this deed. For the avoidance of doubt, nothing in this clause 3.4(b) affects the obligation of Asciano to pay the Reimbursement Fee, if it is required to do so under clause 12.

- (c) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination (including by virtue of clause 13.3), 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.
- (d) If the Condition Precedent in clause 3.1(b) is not satisfied only because of a failure to obtain the majority required by sub-subparagraph 411(4)(a)(ii)(A) of the Corporations Act, then any party may by written notice to the other parties within 3 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that sub-subparagraph, provided the party has, in good faith, reasonably formed the view that the prospect of the Court exercising its discretion in that way is reasonable.
- (e) If the Court refuses to make an order approving the Scheme which satisfies the Condition Precedent in clause 3.1(d), at the Rail Consortium's, Ports Consortium's and BAPS Consortium's request (acting jointly) Asciano must appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or an independent Senior Counsel indicates that, in his or her view, an appeal would have negligible prospects of success before the End Date). Asciano may bring an appeal even if not requested by the Rail Consortium, Ports Consortium and BAPS Consortium (acting jointly). If any such appeal is undertaken at the request of the Rail Consortium, Ports Consortium and BAPS Consortium (acting jointly), then the Rail Consortium, Ports Consortium and BAPS Consortium will bear Asciano's costs of the appeal (including costs of the independent Senior Counsel) unless the parties otherwise agree. If any such appeal is undertaken by Asciano, without the prior request from the Rail Consortium, Ports Consortium and BAPS Consortium (acting jointly), then Asciano will bear the Rail Consortium's, Ports Consortium's and BAPS Consortium's costs of the appeal unless the parties otherwise agree.

### 3.5 Certain notices relating to Conditions Precedent

- (a) Each party must promptly advise each other, orally and in writing, of satisfaction of a Condition Precedent.
- (b) If a Condition Precedent is not satisfied by the time and date specified for satisfaction of that Condition Precedent, then, unless there is no reasonable prospect that the Condition Precedent will be satisfied before the End Date, Asciano must make an application to defer the Second Court Date until such time (being not later than the Business Day before the End Date) as reasonably required to enable the relevant Condition Precedent to be satisfied.
- (c) If, before the time and date specified for satisfaction of a Condition Precedent, an event or occurrence that will prevent that Condition Precedent being satisfied occurs, the party with knowledge of that event must give the other parties written notice of that event or occurrence as soon as possible.

- (d) Each party must promptly advise the other parties, orally and in writing, of any fact, matter, change, event or circumstance 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-satisfaction of any of the Conditions Precedent; or
  - (iii) a material breach of this deed by the relevant party.

## 4 Transaction steps

### 4.1 Scheme

Asciano must propose the Scheme to Asciano Shareholders on and subject to the terms of this deed.

### 4.2 No amendment to the Scheme without consent

Asciano must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of the Rail Consortium (such consent not to be unreasonably withheld or delayed in relation to procedural or administrative matters that do not relate to the value of the Scheme Consideration or the Scheme Shares).

### 4.3 No material amendment to the Conditional Transfer Agreements without consent

The Rail Consortium, Ports Consortium and BAPS Consortium must not consent to any material modification of, or amendment to, any provision of the Conditional Transfer Agreements (from the drafts provided to Asciano prior to the date of this deed) relating to the value of the transfer of Asciano Shares under such agreement, without the prior written consent of Asciano, not to be unreasonably withheld or delayed.

### 4.4 Scheme Consideration

- (a) The consideration to be provided by BidCo in respect of each Scheme Share is:
  - (i) A\$9.15; less
  - (ii) the amount of the Asciano Permitted Special Dividend on a per Asciano Share basis,(the **Scheme Consideration**).
- (b) Each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder, in accordance with the terms of this deed, the Scheme and the Deed Poll.
- (c) Subject to clauses 3.1 and 13 and the terms of the Scheme, the Rail Consortium undertakes and warrants to Asciano that, in consideration of the transfer to BidCo of each Asciano Share held by a Scheme Shareholder under the terms of the Scheme, on the Implementation Date the Rail Consortium will:
  - (i) procure that BidCo accepts that transfer; and
  - (ii) procure that BidCo provides, to each Scheme Shareholder the Scheme Consideration for each Scheme Share in accordance with the terms of this deed, the Scheme and the Deed Poll.

#### 4.5 Asciano Rights

Asciano must take all actions necessary to ensure that:

- (a) no more than the number of Asciano Rights set out in Schedule 4, or which are otherwise issued after the date of this deed consistently with the exceptions to limb (13) of the definition of Asciano Prescribed Occurrence, vest and/or have any restrictions on their exercise waived; and
- (b) any Asciano Rights that do not vest either lapse or are cancelled upon the Scheme becoming Effective.

#### 4.6 Asciano Permitted Special Dividend

- (a) Asciano may, in its sole discretion, pay Asciano Shareholders who are recorded in the Asciano Share Register as a holder of Asciano Shares at the Special Dividend Record Date the Asciano Permitted Special Dividend (which shall be franked to the extent determined by Asciano) on the Special Dividend Payment Date.
- (b) The amount per Asciano Share of the Asciano Permitted Special 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 the Implementation Date.

### 5 Implementation

#### 5.1 Asciano's obligations

Asciano must take all necessary steps to implement the Transactions as soon as is reasonably practicable and, without limiting the foregoing, use reasonable endeavours to ensure that each step in the Timetable is met by the relevant date set out beside that step (and must consult with the other parties on a regular basis about its progress in that regard, but, to avoid doubt, no party is entitled to require another party to perform steps in the Timetable at an earlier time than set out in the Timetable), including doing any acts it is authorised and able to do on behalf of Asciano Shareholders, and including each of the following:

- (a) **preparation of Scheme Booklet:** prepare and despatch the Scheme Booklet in accordance with all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60, and the terms and conditions of any ASIC relief or exemption and any ASX waiver or confirmation and any ASIC relief or exemption;
- (b) **directors' recommendation:**
  - (i) include in the Scheme Booklet statements by the Asciano Board unanimously recommending that Asciano Shareholders (other than Associated Shareholders) vote in favour of the Scheme at the Scheme Meeting, in the absence of a Superior Proposal; and
  - (ii) in respect of any (and each) Asciano Board Member who has informed Asciano that he or she will (in the absence of a Superior Proposal) vote, or procure the voting of, any Director Asciano Shares at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting, subject to that Asciano Board Member providing consent to do so, include a statement in the Scheme Booklet which reflects that position,

unless there has been a change of recommendation permitted by clause 5.9;
- (c) **paragraph 411(17)(b) statement:** apply to ASIC for the production of:
  - (i) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and

- (ii) a statement under paragraph 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (d) **Court direction:** apply to the Court for orders pursuant to subsection 411(1) of the Corporations Act directing Asciano to convene the Scheme Meeting;
- (e) **Scheme Meeting:** convene the Scheme Meeting to seek Asciano Shareholders' agreement to the Scheme in accordance with the orders made by the Court pursuant to subsection 411(1) of the Corporations Act;
- (f) **Court documents:** consult with the Rail Consortium in relation to the content of the documents required for the purpose of each of the Court hearings held for the purpose of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purpose of amending drafts of those documents, reasonable comments from the Rail Consortium Members and their respective Related Persons on those documents provided such comments are provided in a timely manner;
- (g) **Court approval:** (subject to all Conditions Precedent in clause 3.1, other than the Condition Precedent in clause 3.1(d), being satisfied or waived in accordance with this deed) apply to the Court for orders approving the Scheme as agreed to by the Asciano Shareholders (other than Associated Shareholders) at the Scheme Meeting;
- (h) **Certificate:** at the hearing on the Second Court Date provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(d)) have been satisfied or waived in accordance with this deed. A draft of such certificate shall be provided by Asciano to the Rail Consortium by 4.00 pm on the date that is 3 Business Days prior to the Second Court Date;
- (i) **lodge copy of Court order:** lodge with ASIC an office copy of the Court order in accordance with subsection 411(10) of the Corporations Act approving the Scheme by no later than the Business Day after the date on which the Court order was made (or such later date as agreed in writing by the parties to this deed);
- (j) **Scheme Consideration:** if the Scheme becomes Effective, finalise and close the Asciano Share Register as at the Scheme Record Date, and determine entitlements to the Scheme Consideration, in accordance with the Scheme and the Deed Poll;
- (k) **transfer and registration:** if the Scheme becomes Effective and subject to BidCo having provided the Scheme Consideration in accordance with the Scheme and Deed Poll:
  - (i) execute, on behalf of Scheme Shareholders, instruments of transfer of Asciano Shares held by Scheme Shareholders to BidCo; and
  - (ii) register all transfers of Asciano Shares held by Scheme Shareholders to BidCo on the Implementation Date;
- (l) **consultation with Rail Consortium, Ports Consortium and BAPS Consortium in relation to Scheme Booklet:** consult with the Rail Consortium, Ports Consortium and BAPS Consortium as to the content and presentation of the Scheme Booklet including:
  - (i) providing to the Rail Consortium, Ports Consortium and BAPS Consortium drafts of the Scheme Booklet and the Independent Expert's Report for the purpose of enabling the Rail Consortium, Ports Consortium and BAPS Consortium to review and comment on those draft documents. In relation to the Independent Expert's

Report, the Rail Consortium's, Ports Consortium's and BAPS Consortium's review is to be limited to a factual accuracy review;

- (ii) taking all reasonable comments made by the Rail Consortium, Ports Consortium and BAPS Consortium into account in good faith when producing a revised draft of the Scheme Booklet provided such comments are provided in a timely manner;
  - (iii) providing to the Rail Consortium, Ports Consortium and BAPS Consortium a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable the Rail Consortium, Ports Consortium and BAPS Consortium to review the Regulator's Draft before the date of its submission;
  - (iv) obtaining written consent from the Rail Consortium, Ports Consortium and BAPS Consortium for the form and content in which the Rail Consortium Information, Ports Consortium Information and BAPS Consortium Information (respectively) appears in the Scheme Booklet;
  - (v) confirming in writing to the Rail Consortium, Ports Consortium and BAPS Consortium that the Asciano Information in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (m) **information:** provide all necessary information, and procure that the Asciano Registry provides all necessary information, in each case in a form reasonably requested by the Rail Consortium, about the Scheme, the Scheme Shareholders and Asciano Shareholders to the Rail Consortium and their respective Related Persons, which the Rail Consortium reasonably requires in order to:
- (i) canvass views on the Scheme by Asciano Shareholders (including, where appropriate, the results of directions by Asciano to Asciano Shareholders under Part 6C.2 of the Corporations Act); or
  - (ii) facilitate the provision by, or on behalf of, BidCo of the Scheme Consideration.
- Asciano must comply with any reasonable request of the Rail Consortium for Asciano to give directions to Asciano shareholders under Part 6C.2 of the Corporations Act from time to time for one of the purposes referred to in sub-paragraphs (i) or (ii) above;
- (n) **ASIC and ASX review:** keep the Rail Consortium, Ports Consortium and BAPS Consortium informed of any material matters raised by ASIC or ASX in relation to the Scheme Booklet or Transactions, and use reasonable endeavours to take into consideration in resolving such matters any issues raised by the Rail Consortium, Ports Consortium or BAPS Consortium;
- (o) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (p) **Independent Expert:** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by the Independent Expert for inclusion in the Scheme Booklet (including any updates thereto);
- (q) **compliance with laws:** do everything reasonably within its power to ensure that the Transactions are effected in accordance with all applicable laws and regulations;



- (r) **listing:** subject to clause 5.1(t), not do anything to cause Asciano Shares to cease being quoted on ASX or to become permanently suspended from quotation unless the Rail Consortium has agreed in writing;
- (s) **update Scheme Booklet:** until the date of the Scheme Meeting, promptly update or supplement the Scheme Booklet with, or, if the parties agree (provided that Asciano will not be limited from making any disclosure necessary, in its sole discretion, to comply with its continuous disclosure obligations), otherwise inform the market by way of announcement of, any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement and seek the Court's approval for the despatch of any updated or supplementary Scheme Booklet. Asciano must consult with the Rail Consortium, Ports Consortium and BAPS Consortium as to the content and presentation of any updated or supplementary Scheme Booklet in the manner contemplated by clause 5.1(l);
- (t) **suspension of trading:** apply to ASX to suspend trading in Asciano Shares with effect from the close of trading on the Effective Date; and
- (u) **assistance:** up to (and including) the Implementation Date and subject to obligations of confidentiality owed to third parties and undertakings to Government Agencies, provide the Rail Consortium, Ports Consortium and BAPS Consortium with information that any of them reasonably requests for the purpose of:
  - (i) preparation of the Rail Consortium Information, Ports Consortium Information or BAPS Consortium Information; and
  - (ii) implementation of the Transactions,provided that nothing in this clause 5.1(u) requires Asciano to provide any Commercially Sensitive or Competitive Information to Qube, but this is subject to clause 5.6.

## 5.2 Rail Consortium's obligations

The Rail Consortium must take all necessary steps to implement the Scheme as soon as is reasonably practicable and without limiting the foregoing use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step (and consult with Asciano on a regular basis about its progress in that regard, but, to avoid doubt, no party is entitled to require another party to perform steps in the Timetable at an earlier time than set out in the Timetable), including doing each of the following:

- (a) **Rail Consortium Information:** prepare and provide to Asciano the Rail Consortium Information for inclusion in the Scheme Booklet required by all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60 and the terms and conditions of any ASIC relief or exemption and any ASX waiver or confirmation and any ASIC relief or exemption, and consent to the inclusion of that information in the Scheme Booklet;
- (b) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by Asciano and provide comments on those drafts in good faith and in a timely manner;
- (c) **Independent Expert's Report:** subject to the Independent Expert entering into arrangements with the Rail Consortium including in relation to confidentiality in a form reasonably acceptable to the Rail Consortium, provide any assistance or information reasonably requested by Asciano or by the Independent Expert in connection with the



- preparation of the Independent Expert's Report to be sent together with the Scheme Booklet;
- (d) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
  - (e) **Deed Poll:** by no later than the Business Day prior to the First Court Date, execute and deliver to Asciano the Deed Poll and procure that BidCo will execute and deliver to Asciano the Deed Poll;
  - (f) **accuracy of Rail Consortium Information:** confirm in writing to Asciano that the Rail Consortium Information in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
  - (g) **consultation with Asciano in relation to Rail Consortium Information:** consult with Asciano as to the content and presentation of the Rail Consortium Information including:
    - (i) providing drafts of the Rail Consortium Information for the purpose of enabling Asciano to review and comment on that draft information;
    - (ii) taking all reasonable comments made by Asciano into account in good faith when producing a revised draft of the Rail Consortium Information provided that such comments are provided in a timely manner;
    - (iii) providing to Asciano a final draft of the Rail Consortium Information within a reasonable time before the Regulator's Draft is to be finalised and to enable Asciano to review the Rail Consortium Information section of the Regulator's Draft before the date of its submission;
  - (h) **information:** promptly provide to Asciano any information regarding the Rail Consortium that Asciano reasonably requires in order to prepare the Scheme Booklet;
  - (i) **Certificate:** at the hearing on the Second Court Date provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(d)) have been satisfied or waived in accordance with this deed. A draft of such certificate shall be provided by the Rail Consortium to Asciano by 4.00 pm on the date that is 3 Business Days prior to the Second Court Date;
  - (j) **share transfer:** if the Scheme becomes Effective:
    - (i) procure that BidCo accepts a transfer of the Scheme Shares as contemplated by clause 4.4(c)(i); and
    - (ii) execute, or procure that BidCo executes, instruments of transfer in respect of the Scheme Shares;
  - (k) **Scheme Consideration:** if the Scheme becomes Effective, procure the provision of, by or on behalf of, BidCo, the Scheme Consideration in the manner and amount contemplated by the terms of the Scheme and the Deed Poll;
  - (l) **update Rail Consortium Information:** until the date of the Scheme Meeting, provide to Asciano any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Rail Consortium Information contained in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
  - (m) **assistance:** up to (and including) the Implementation Date and subject to obligations of confidentiality owed to third parties and undertakings to Government Agencies, provide

Asciano with information that Asciano reasonably requests for the purpose of preparation of the Scheme Booklet and implementation of the Transactions; and

- (n) **compliance with laws:** do everything reasonably within its power to ensure that the Transactions are effected in accordance with all applicable laws and regulations.

### 5.3 Ports Consortium's obligations

The Ports Consortium must, to the extent it is within their power to do so, take all necessary steps to facilitate the implementation of the Scheme as soon as is reasonably practicable and without limiting the foregoing use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step (and consult with Asciano on a regular basis about its progress in that regard, but, to avoid doubt, no party is entitled to require another party to perform steps in the Timetable at an earlier time than set out in the Timetable), including doing each of the following:

- (a) **Ports Consortium Information:** prepare and provide to Asciano the Ports Consortium Information for inclusion in the Scheme Booklet required by all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60 and the terms and conditions of any ASIC relief or exemption and any ASX waiver or confirmation and any ASIC relief or exemption, and consent to the inclusion of that information in the Scheme Booklet;
- (b) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by Asciano and provide comments on those drafts in good faith and in a timely manner;
- (c) **Independent Expert's Report:** subject to the Independent Expert entering into arrangements with the Ports Consortium including in relation to confidentiality in a form reasonably acceptable to the Ports Consortium, provide any assistance or information reasonably requested by Asciano or by the Independent Expert in connection with the preparation of the Independent Expert's Report to be sent together with the Scheme Booklet;
- (d) **accuracy of Ports Consortium Information:** confirm in writing to Asciano that the Ports Consortium Information in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (e) **consultation with Asciano in relation to Ports Consortium Information:** consult with Asciano as to the content and presentation of the Ports Consortium Information including:
  - (i) providing drafts of the Ports Consortium Information for the purpose of enabling Asciano to review and comment on that draft information;
  - (ii) taking all reasonable comments made by Asciano into account in good faith when producing a revised draft of the Ports Consortium Information provided that such comments are provided in a timely manner;
  - (iii) providing to Asciano a final draft of the Ports Consortium Information within a reasonable time before the Regulator's Draft is to be finalised and to enable Asciano to review the Ports Consortium Information section of the Regulator's Draft before the date of its submission;
- (f) **information:** promptly provide to Asciano any information regarding the Ports Consortium that Asciano reasonably requires in order to prepare the Scheme Booklet;
- (g) **Certificate:** at the hearing on the Second Court Date provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions

Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(d)) have been satisfied or waived in accordance with this deed. A draft of such certificate shall be provided by the Ports Consortium to Asciano by 4.00 pm on the date that is 3 Business Days prior to the Second Court Date;

- (h) **update Ports Consortium Information:** until the date of the Scheme Meeting, provide to Asciano any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Ports Consortium Information contained in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (i) **assistance:** up to (and including) the Implementation Date and subject to obligations of confidentiality owed to third parties and undertakings to Government Agencies, provide Asciano with information that Asciano reasonably requests for the purpose of preparation of the Scheme Booklet and implementation of the Scheme and Asset Sales; and
- (j) **compliance with laws:** do everything reasonably within its power to ensure that the Transactions are effected in accordance with all applicable laws and regulations.

#### 5.4 BAPS Consortium's obligations

The BAPS Consortium must, to the extent it is within their power to do so, take all necessary steps to facilitate the implementation of the Scheme as soon as is reasonably practicable and without limiting the foregoing use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step (and consult with Asciano on a regular basis about its progress in that regard, but, to avoid doubt, no party is entitled to require another party to perform steps in the Timetable at an earlier time than set out in the Timetable), including doing each of the following:

- (a) **BAPS Consortium Information:** prepare and provide to Asciano the BAPS Consortium Information for inclusion in the Scheme Booklet required by all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60 and the terms and conditions of any ASIC relief or exemption and any ASX waiver or confirmation and any ASIC relief or exemption, and consent to the inclusion of that information in the Scheme Booklet;
- (b) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by Asciano and provide comments on those drafts in good faith and in a timely manner;
- (c) **Independent Expert's Report:** subject to the Independent Expert entering into arrangements with the BAPS Consortium including in relation to confidentiality in a form reasonably acceptable to the BAPS Consortium, provide any assistance or information reasonably requested by Asciano or by the Independent Expert in connection with the preparation of the Independent Expert's Report to be sent together with the Scheme Booklet;
- (d) **accuracy of BAPS Consortium Information:** confirm in writing to Asciano that the BAPS Consortium Information in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (e) **consultation with Asciano in relation to BAPS Consortium Information:** consult with Asciano as to the content and presentation of the BAPS Consortium Information including:
  - (i) providing drafts of the BAPS Consortium Information for the purpose of enabling Asciano to review and comment on that draft information;

- (ii) taking all reasonable comments made by Asciano into account in good faith when producing a revised draft of the BAPS Consortium Information provided that such comments are provided in a timely manner;
  - (iii) providing to Asciano a final draft of the BAPS Consortium Information within a reasonable time before the Regulator's Draft is to be finalised and to enable Asciano to review the BAPS Consortium Information section of the Regulator's Draft before the date of its submission;
- (f) **information:** promptly provide to Asciano any information regarding the BAPS Consortium that Asciano reasonably requires in order to prepare the Scheme Booklet;
- (g) **Certificate:** at the hearing on the Second Court Date provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(d)) have been satisfied or waived in accordance with this deed. A draft of such certificate shall be provided by the BAPS Consortium to Asciano by 4.00 pm on the date that is 3 Business Days prior to the Second Court Date
- (h) **update BAPS Consortium Information:** until the date of the Scheme Meeting, provide to Asciano any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the BAPS Consortium Information contained in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (i) **assistance:** up to (and including) the Implementation Date and subject to obligations of confidentiality owed to third parties and undertakings to Government Agencies, provide Asciano with information that Asciano reasonably requests for the purpose of preparation of the Scheme Booklet and implementation of the Scheme and Asset Sales; and
- (j) **compliance with laws:** do everything reasonably within its power to ensure that the Transactions are effected in accordance with all applicable laws and regulations.

## 5.5 Conduct of business

- (a) Subject to clauses 5.5(c), 5.5(d) and 5.5(e), from the date of this deed up to and including the Implementation Date, and without limiting any other obligations under this deed, Asciano must:
  - (i) conduct its businesses and operations, and cause each other Asciano Group Member to conduct its respective business 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 operations have been conducted in the 12 month period prior to the date of this deed;
  - (ii) keep the Rail Consortium, Ports Consortium and BAPS Consortium informed of the conduct of the Asciano Group's business, including in relation to the status and positions of parties in negotiations on key enterprise agreements;
  - (iii) provide regular reports on the financial affairs of the Asciano Group in a timely manner to the Rail Consortium, Ports Consortium and BAPS Consortium;
  - (iv) use all reasonable endeavours, and procure that each other Asciano Group Member makes all reasonable endeavours, to:
    - (A) preserve and maintain the value of their respective businesses and assets;

- (B) keep available the services of their directors, officers and employees; and
  - (C) maintain and preserve their relationships with Government Agencies, customers, suppliers and others having business dealings with any Asciano Group Member (including using reasonable endeavours to obtain consents from third parties to any change of control provisions in any contracts or arrangements to which a member of the Asciano Group is a party which the Rail Consortium, Ports Consortium and BAPS Consortium reasonably requests).
- (b) From the date of this deed up to and including the Implementation Date, Asciano must ensure that no Asciano Prescribed Occurrence and no Asciano Regulated Event occurs.
- (c) Nothing in clause 5.5(a) restricts the ability of Asciano to take any action:
  - (i) which is required by a Transaction Document, such action to occur in the manner contemplated by the relevant Transaction Document;
  - (ii) which has been agreed to in writing by the Rail Consortium, Ports Consortium and BAPS Consortium; or
  - (iii) which is Fairly Disclosed in the Disclosure Materials as being an action that a member of the Asciano Group will carry out between (and including) the date of this deed and the Implementation Date.
- (d) For the avoidance of doubt, nothing in clause 5.5(a) restricts the ability of Asciano to:
  - (i) respond to a Competing Proposal to the extent permitted in accordance with clause 11; or
  - (ii) pay the Asciano Interim Dividend or Asciano Permitted Special Dividend.
- (e) Nothing in clause 5.5(a) requires Asciano to provide any Commercially Sensitive or Competitive Information to Qube, but this is subject to clause 5.6.
- (f) From the date of this deed until and including the Second Court Date, unless the other parties agree otherwise in writing, Asciano will promptly notify the Rail Consortium, Ports Consortium and BAPS Consortium of anything of which Asciano becomes aware that:
  - (i) makes any material information publicly filed by it (either on its own account or in respect of any other Asciano Group Member) to be, or reasonably likely to be, incomplete, incorrect, untrue or misleading in any material respect;
  - (ii) makes any of the Asciano Representations and Warranties false, inaccurate, misleading or deceptive in any material respect; or
  - (iii) may, or may with time, constitute an Asciano Material Adverse Change, Asciano Regulated Event or Asciano Prescribed Occurrence.

## 5.6 Commercially sensitive or competitive information

- (a) Each of clauses 5.1(u), 5.5(e), 6(a)(x) and 11.5 is subject to clause 5.6(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.

## 5.7 Sale Agreements

- (a) Asciano must, and the Ports Consortium must procure that Ports HoldCo:

- (i) perform or performs their respective obligations under the Ports SPA as and when the Ports SPA requires; and
  - (ii) use or uses reasonable endeavours to ensure that the conditions to completion under the Ports SPA are satisfied on the same day as the conditions to completion under the BAPS SPA are satisfied and that completion under the Ports SPA occurs at the same time as completion under the BAPS SPA.
- (b) Asciano must, and the BAPS Consortium must procure that BAPS HoldCo:
  - (i) perform or performs their respective obligations under the BAPS SPA as and when the BAPS SPA requires; and
  - (ii) use or uses reasonable endeavours to ensure that the conditions to completion under the BAPS SPA are satisfied on the same day as the conditions to completion under the Ports SPA are satisfied and that completion under the BAPS SPA occurs at the same time as completion under the Ports SPA.
- (c) The parties acknowledge that each Sale Agreement provides that completion under the Sale Agreement will not occur unless and until an amount equal to the aggregate Scheme Consideration payable to all Scheme Shareholders under the Scheme has been deposited in cleared funds into an Australian dollar denominated trust account operated by Asciano as trustee for the Scheme Shareholders in accordance with the Deed Poll.
- (d) With effect from completion under the Sale Agreements, each Ports Consortium Member and BAPS Consortium Member ceases to have any rights against Asciano under this deed and irrevocably releases Asciano from all Claims (except to the extent the loss which is the subject of a Claim is actually recovered by Asciano from its insurers under insurance policies in place as at the date of this deed, after deducting from the amount so recovered any costs and expenses incurred by Asciano in recovering such amount).

## 5.8 Appointment of directors

Asciano must, as soon as practicable:

- (a) on the Implementation Date, after Asciano or the Asciano Registry has commenced the despatch of the Scheme Consideration to Scheme Shareholders or the Scheme Shares have been registered in the name of BidCo (whichever is earlier):
  - (i) take all actions necessary to cause the appointment of the nominees of BidCo to the Asciano Board; and
  - (ii) ensure that all directors on the Asciano Board, other than the BidCo nominees, resign and unconditionally and irrevocably release Asciano from any claims they may have against Asciano (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) on the Implementation Date, after Asciano or the Asciano Registry has commenced the despatch of the Scheme Consideration to Scheme Shareholders or the Scheme Shares have been registered in the name of BidCo (whichever is earlier), take all actions to ensure that all directors on the boards of Asciano's Subsidiaries resign and unconditionally and irrevocably release Asciano and such Asciano Subsidiaries from any claims they may have against any of them, and to cause the appointment of nominees of BidCo to those boards (without limitation to any accrued rights they may have under any deed of access and indemnity or policy of directors and officers insurance).



**5.9 Asciano Board recommendation**

- (a) Asciano must use its best endeavours to procure that, subject to clause 5.9(b):
  - (i) the Asciano Board Members unanimously recommend that Asciano Shareholders (other than Associated Shareholders) vote in favour of the Scheme at the Scheme Meeting, in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interest of Scheme Shareholders; and
  - (ii) the Scheme Booklet and any other public statements made by Asciano in relation to the Transactions include a statement by the Asciano Board to that effect.
- (b) Asciano must use its best endeavours to procure that the Asciano Board collectively, and the Asciano Board Members individually, do not change, withdraw or modify its, his or her recommendation to vote in favour of the Scheme unless:
  - (i) the Independent Expert provides a report to Asciano (including either the Independent Expert's Report or any update, addendum or variation to it) that concludes that the Scheme is not in the best interest of Scheme Shareholders; or
  - (ii) Asciano has received, other than as a result of a breach of clause 11, a Superior Proposal,

and Asciano has complied with its obligations under clause 12.

For the purposes of this clause, customary qualifications and explanations contained in the Scheme Booklet in relation to a recommendation to vote in favour of the Scheme 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 in favour of the Scheme.

- (c) Without limiting the operation of the preceding provisions of this clause 5, if circumstances arise (including the receipt or expected receipt of an unfavourable report from the Independent Expert) which may lead to any one or more Asciano Board Members changing, withdrawing or modifying his or her recommendation to vote in favour of the Scheme (other than such circumstances as provided for in clause 11.3 or 11.4 which shall be regulated by those clauses), Asciano must:
  - (i) promptly notify the Rail Consortium, Ports Consortium and BAPS Consortium of this fact; and
  - (ii) consult with the Rail Consortium, Ports Consortium and BAPS Consortium in good faith to determine whether there are any steps that can be taken to avoid such a change, withdrawal or modification (as applicable).

**5.10 Conduct of Court proceedings**

- (a) Each party is entitled to separate representation at all Court proceedings affecting the Transactions.
- (b) This deed does not give any party any right or power to give undertakings to the Court for or on behalf of another party without that party's written consent.
- (c) Each party must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this deed.

**5.11 Responsibility statements**

- (a) The Scheme Booklet will contain responsibility statements to the effect that:

- (i) the Rail Consortium is responsible for the Rail Consortium Information;
  - (ii) the Ports Consortium is responsible for the Ports Consortium Information;
  - (iii) the BAPS Consortium is responsible for the BAPS Consortium Information; and
  - (iv) Asciano is responsible for the Asciano Information contained in the Scheme Booklet.
- (b) If after a reasonable period of consultation, Asciano, the Rail Consortium, Ports Consortium and BAPS Consortium are unable to agree on the form or content of the Scheme Booklet:
  - (i) where the determination relates to Rail Consortium Information, the Rail Consortium will make the final determination as to the form and content of the Rail Consortium Information;
  - (ii) where the determination relates to Ports Consortium Information, the Ports Consortium will make the final determination as to the form and content of the Ports Consortium Information;
  - (iii) where the determination relates to BAPS Consortium Information, Brookfield will make the final determination as to the form and content of the BAPS Consortium Information; and
  - (iv) in any other case, Asciano will make the final determination as to the form and content of the Scheme Booklet.

#### **5.12 Nominated Representatives**

- (a) Each party agrees, and represents and warrants to the other parties, that its Nominated Representatives acting jointly are authorised to bind the party in respect of all matters under this deed (including to agree, approve or consent to matters requiring a party's agreement, approval or consent under this deed).
- (b) The parties shall ensure that their respective Nominated Representatives meet (by any means, including by telephone) and correspond (by any means, including by email) on a regular basis to discuss any material commercial, legal or strategic matters relating to the Transactions.

### **6 Access to information**

- (a) Between (and including) the date of this deed and the Implementation Date, Asciano must, and must cause each other Asciano Group Member to, afford to the Rail Consortium, Ports Consortium and BAPS Consortium and their respective Related Persons reasonable access to information, including financial, tax and other information, (subject to any existing confidentiality obligations owed to third parties, appropriate consents in relation to which Asciano must use all reasonable endeavours to obtain) of any member of the Asciano Group, or such senior executives of Asciano as reasonably requested by the Rail Consortium, Ports Consortium or BAPS Consortium at mutually convenient times, and afford the Rail Consortium, Ports Consortium and BAPS Consortium reasonable co-operation for the purpose of:
  - (i) implementation of the Transactions;
  - (ii) the Rail Consortium, Ports Consortium or BAPS Consortium obtaining an understanding of the operations of the Asciano Group's business, financial position, prospects and affairs in order to allow and facilitate the development and the implementation of the plans of the Rail Consortium, Ports Consortium or



BAPS Consortium for those businesses following implementation of the Transactions;

- (iii) compliance with legally binding reporting obligations to holders of their shares, interests or other securities, or to financiers or other investors, or satisfy their compliance obligations under any applicable legal, governmental, taxation or regulatory rules, or otherwise imposed by a Government 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
  - (iv) any other purpose agreed between the parties,
- and any party that is party to a Confidentiality Agreement may disclose such information to third parties in accordance with the terms of the relevant Confidentiality Agreement (and any bona fide syndicate financiers will be deemed to have been consented to by Asciano for inclusion as "Associates" as that term is defined in the Confidentiality Agreement), provided that:
- (v) the Rail Consortium, Ports Consortium and BAPS Consortium will focus on material issues, having regard to management commitments and the impact of information requests on Asciano's business;
  - (vi) providing access or information pursuant to this clause does not result in unreasonable disruptions to Asciano's business, require Asciano to make further disclosure to any other entity or Government Agency or require the disclosure of any document that would compromise Asciano's legal professional privilege;
  - (vii) any obligations under this clause 6 are subject to any existing confidentiality obligations owed to the third parties, appropriate consents in relation to which Asciano must use all reasonable endeavours to obtain;
  - (viii) nothing in this clause 6 will require Asciano to provide information concerning Asciano's directors and management's consideration of the Scheme or any Competing Proposal (but this proviso does not limit Asciano's obligations under clause 11);
  - (ix) Asciano may provide to the Rail Consortium or Ports Consortium its records at a place other than Asciano's business premises; and
  - (x) nothing in this clause 6 will require Asciano to provide any Commercially Sensitive or Competitive Information to Qube, but this is subject to clause 5.6.
- (b) Without limiting clause 6(a), Asciano agrees to provide timely cooperation in connection with the arrangement or syndication of any acquisition, debt or equity financings by any Rail Consortium Member, Ports Consortium Member or BAPS Consortium Member as may be reasonably requested by any of them (the **Requesting Party**) and from time to time, including:
- (i) participating in meetings (including meetings with ratings agencies), drafting sessions and due diligence sessions;
  - (ii) furnishing, in accordance with clause 6(a), the Requesting Party and its financing sources within a reasonable timeframe (including providing any consent required under the relevant Confidentiality Agreement to such disclosure) with financial and other pertinent information regarding Asciano, the Asciano Group or any

other entity in which any Asciano Group Member has an investment as may be reasonably requested by the Requesting Party;

- (iii) assisting the Requesting Party and its 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;
- (iv) cooperating with any marketing efforts undertaken by the Requesting Party and its financing sources related to acquisition, debt or equity financings (including by making available such senior executives of Asciano as reasonably requested by the Requesting Party at mutually convenient times for conference calls, management presentation sessions, roadshows, sales force presentations and similar meetings or presentations);
- (v) assisting the Requesting Party and its Related Bodies Corporate or (where Brookfield is the Requesting Party) Affiliates to satisfy any conditions and obligations of any financing to the extent same is within its control; and
- (vi) providing any information required to complete a reconciliation of financial statements to applicable accounting standards,

provided, in each case, that:

- (vii) where Asciano has acted in good faith, neither Asciano nor any Asciano Group Member shall be required to incur any liability in connection with any acquisition, debt or equity financing prior to implementation of the Scheme that is not reimbursable by the Requesting Party;
- (viii) the Requesting Party must indemnify and hold harmless Asciano Group Members and their respective Related Persons 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, Asciano or an Asciano Group Member or their respective Related Persons;
- (ix) in addition to any limitation expressed in clause 6(a) to apply to all of this clause 6, nothing in this clause 6(b), shall require cooperation to the extent that it would:
  - (A) cause any condition precedent in clause 3.1 to not be satisfied or otherwise cause a breach of this deed; or
  - (B) require an Asciano Group Member to take any action that would reasonably be expected to conflict with or violate the Asciano Group Member constituent documents or any law; or
  - (C) require the approval of shareholders of Asciano under section 260B of the Corporations Act or equivalent or analogous restriction in any jurisdiction; and
- (x) none of the Asciano Group Members shall be required to execute prior to Implementation any agreements, including any credit or other agreements, pledge or security documents, or other certificates, legal opinions or documents in connection with the equity or debt financing.

## 7 Representations and warranties

### 7.1 Common GIP, CPPIB, Shunrong, GIC, bclMC, QH Investco and Qube representations and warranties

Each of GIP, CPPIB, Shunrong, GIC, bclMC, QH Investco and Qube (each a **Warrantor**) represents and warrants to Asciano (in its own right and separately as trustee or nominee for Asciano's Indemnified Parties) that each of the following statements are true and correct with respect to the relevant Warrantor (except that where it is noted below that a warranty relates to a particular Warrantor only, then only that Warrantor gives that warranty with respect to itself):

- (a) **validly existing:**
  - (i) with respect to GIP only, the GIP Bell Australia Unit Trust is duly established and validly subsisting;
  - (ii) with respect to CPPIB only, CPPIB is a corporation duly established by statute and validly existing under the laws of the place of its incorporation;
  - (iii) with respect to bclMC only, the bclMC Nitro Investment Trust is duly established and validly subsisting; and
  - (iv) with respect to each other Warrantor, it is a corporation duly incorporated and validly existing under the laws of the place of its incorporation;
- (b) **authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of the Warrantor;
- (c) **power:**
  - (i) with respect to GIP only, Global Infrastructure Management Australia Pty Ltd 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;
  - (ii) with respect to bclMC only, bclMC Nitro Trustee Inc., is empowered by the trust deed of the bclMC Nitro Investment Trust to enter into and perform its obligations under this Deed, in its capacity as a trustee of the bclMC Nitro Investment Trust; and
  - (iii) with respect to each other Warrantor, it has the power to enter into and perform its obligations under this Deed;
- (d) **no default:** this deed does not conflict with or result in the breach of or a default under:
  - (i) any provision of its constitution or, if applicable, other constituent document (and, with respect to GIP only, of the trust deed of the GIP Bell Australia Unit Trust and, with respect to bclMC only, of the trust deed of the bclMC Nitro Investment Trust); and
  - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which the Warrantor (and, with respect to GIP only, the GIP Bell Australia Unit Trust and, with respect to bclMC only, the bclMC Nitro Investment Trust) is bound,

and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;
- (e) **deed binding:**

- (i) with respect to GIP only, as a continuing obligation, this deed is a valid and binding obligation of Global Infrastructure Management Australia Pty Ltd as trustee of the GIP Bell Australia Unit Trust, enforceable in accordance with its terms;
  - (ii) with respect to bclMC only, as a continuing obligation, this deed is a valid and binding obligation of bclMC Nitro Trustee, Inc. as trustee of the bclMC Nitro Investment Trust, enforceable in accordance with its terms; and
  - (iii) with respect to each other Warrantor, as a continuing obligation, this deed is a valid and binding obligation of the Warrantor, enforceable in accordance with its terms; and
- (f) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to the Warrantor, nor has any regulatory action of any nature of which the Warrantor is aware been taken that would prevent or restrict the Warrantor's ability to fulfil its obligations under this deed.

## 7.2 Indemnity by GIP, CPPIB, Shunrong, GIC, bclMC, QH Investco and Qube

Each of GIP, CPPIB, Shunrong, GIC, bclMC, QH Investco and Qube agrees with Asciano (in its own right and separately as trustee or nominee for Asciano's Indemnified Parties) to indemnify Asciano and each of Asciano's Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Asciano or any of Asciano's Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the representations and warranties given by GIP, CPPIB, Shunrong, GIC, bclMC, QH Investco or Qube (respectively) in clause 7.1. For the avoidance of doubt, each of GIP, CPPIB, Shunrong, GIC, bclMC, QH Investco and Qube gives the indemnity severally, not jointly.

## 7.3 Brookfield representation and warranties

Brookfield represents and warrants to Asciano (in its own right and separately as trustee or nominee for each of Asciano's Indemnified Parties) that:

- (a) **validly existing:** BIPL and BIF II GP are validly existing corporations registered under the laws of their places of incorporation and BIP and BIF II are limited partnerships validly existing under the laws of the places of their formation;
- (b) **authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of Brookfield;
- (c) **BIPL's power:** BIPL has full capacity, corporate power and lawful authority to execute, deliver and perform this deed on behalf of BIP and no approvals of any BIPL or BIP securityholders are required to do so;
- (d) **BIF II GP's power:** BIF II GP has full capacity, corporate power and lawful authority to execute, deliver and perform this deed on behalf of BIF II;
- (e) **no default:** this deed does not conflict with or result in the breach of or a default under:
  - (i) any provision of the limited partnership agreements governing BIP and BIF II, or the articles or by-laws of BIPL and BIF II LP, as amended; or
  - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other Brookfield Group Member is bound,
 and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;

- (f) **deed binding:** as a continuing obligation, this deed is a valid and binding obligation of BIPL in its capacity as general partner of BIP and of BIF II GP in its capacity as general partner of BIF II, enforceable in accordance with its terms; and
- (g) **Insolvency Event or regulatory action:** 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.

#### 7.4 Brookfield's indemnity

Brookfield agrees with Asciano (in its own right and separately as trustee or nominee for each of Asciano's Indemnified Parties) to indemnify Asciano and each of Asciano's Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Asciano or any of Asciano's Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the representations and warranties in clause 7.3.

#### 7.5 Rail Consortium representations and warranties

The Rail Consortium represents and warrants to Asciano (in its own right and separately as trustee or nominee for each of Asciano's Indemnified Parties) that:

- (a) **Rail Consortium Information:** the Rail Consortium Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Asciano Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of Rail Consortium Information:** the Rail Consortium Information:
  - (i) will be provided to Asciano in good faith and on the understanding that Asciano and each of Asciano's Indemnified Parties will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme; and
  - (ii) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60, and the terms and conditions of any ASIC relief or exemption and any ASX waiver or confirmation and any ASIC relief or exemption,

and all information provided by the Rail Consortium 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 Independent Expert's Report;
- (c) **new information:** it will, as a continuing obligation, provide to Asciano all further or new information which arises after the Scheme Booklet has been despatched to Asciano Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Rail Consortium Information is not misleading or deceptive (including by way of omission);
- (d) **sufficient funding:** BidCo 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 the Rail Consortium, or conditions relating to, or which will cease to apply or be satisfied following, Court approval) to meet its obligations to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;
- (e) **not misleading:** all information it has provided to the Independent Expert, pursuant to clause 5.2(c) or otherwise, or to Asciano, 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 Asciano not misleading in a material respect; and

- (f) **BidCo:** as at the time of implementation of the Scheme, BidCo will not have any shareholders other than a Rail Consortium Member, a Related Body Corporate of a Rail Consortium Member, or an entity which holds shares in BidCo as nominee for Rail Consortium Member or Related Body Corporate of a Rail Consortium Member, or as may be disclosed to Asciano.

## 7.6 Rail Consortium's indemnity

The Rail Consortium agrees with Asciano (in its own right and separately as trustee or nominee for each of Asciano's Indemnified Parties) to indemnify Asciano and each of Asciano's Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Asciano or any of Asciano's Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the representations and warranties in clause 7.5.

## 7.7 Ports Consortium representations and warranties

The Ports Consortium represents and warrants to Asciano (in its own right and separately as trustee or nominee for each of Asciano's Indemnified Parties) that:

- (a) **Ports Consortium Information:** the Ports Consortium Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Asciano Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of Ports Consortium Information:** the Ports Consortium Information:
  - (i) will be provided to Asciano in good faith and on the understanding that Asciano and each of Asciano's Indemnified Party will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme; and
  - (ii) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60, and the terms and conditions of any ASIC relief or exemption and any ASX waiver or confirmation and any ASIC relief or exemption,

and all information provided by the Ports Consortium 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 Independent Expert's Report;

- (c) **new information:** it will, as a continuing obligation, provide to Asciano all further or new information which arises after the Scheme Booklet has been despatched to Asciano Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Ports Consortium Information is not misleading or deceptive (including by way of omission);
- (d) **not misleading:** all information it has provided to the Independent Expert, pursuant to clause 5.3(c) or otherwise, or to Asciano, 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 Asciano not misleading in a material respect; and
- (e) **sufficient funding:** the Ports Consortium 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 the Ports



Consortium, or conditions relating to, or which will cease to apply or be satisfied following, Court approval) to meet any obligations under a Sale Agreement in accordance with its obligations under that Sale Agreement.

## 7.8 Ports Consortium's indemnity

The Ports Consortium agrees with Asciano (in its own right and separately as trustee or nominee for each of Asciano's Indemnified Parties) to indemnify Asciano and each of Asciano's Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Asciano or any of Asciano's Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the representations and warranties in clause 7.7.

## 7.9 BAPS Consortium representations and warranties

The BAPS Consortium represents and warrants to Asciano (in its own right and separately as trustee or nominee for each of Asciano's Indemnified Parties) that:

- (f) **BAPS Consortium Information:** the BAPS Consortium Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Asciano Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (g) **basis of BAPS Consortium Information:** the BAPS Consortium Information:
  - (i) will be provided to Asciano in good faith and on the understanding that Asciano and each of Asciano's Indemnified Parties will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme; and
  - (ii) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60, and the terms and conditions of any ASIC relief or exemption and any ASX waiver or confirmation and any ASIC relief or exemption,

and all information provided by the BAPS Consortium 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 Independent Expert's Report;
- (h) **new information:** it will, as a continuing obligation, provide to Asciano all further or new information which arises after the Scheme Booklet has been despatched to Asciano Shareholders until the date of the Scheme Meeting which is necessary to ensure that the BAPS Consortium Information is not misleading or deceptive (including by way of omission);
- (i) **not misleading:** all information it has provided to the Independent Expert, pursuant to clause 5.4(c) or otherwise, or to Asciano, 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 Asciano not misleading in a material respect; and
- (j) **sufficient funding:** the BAPS Consortium 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 the BAPS Consortium, or conditions relating to, or which will cease to apply or be satisfied following, Court approval) to meet any obligations under a Sale Agreement in accordance with its obligations under that Sale Agreement.

**7.10 BAPS Consortium's indemnity**

The BAPS Consortium agrees with Asciano (in its own right and separately as trustee or nominee for each of Asciano's Indemnified Parties) to indemnify Asciano and each of Asciano's Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Asciano or any of Asciano's Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the representations and warranties in clause 7.9.

**7.11 Asciano's representations and warranties**

Asciano represents and warrants to:

- (a) GIP (in its own right and separately as trustee or nominee for BidCo and each of GIP's Indemnified Parties);
- (b) CPPIB (in its own right and separately as trustee or nominee for BidCo and each of the CPPIB's Indemnified Parties);
- (c) Shunrong (in its own right and separately as trustee or nominee for BidCo and each of Shunrong's Indemnified Parties);
- (d) GIC (in its own right and separately as trustee or nominee for BidCo and each of GIC's Indemnified Parties);
- (e) bclMC (in its own right and separately as trustee or nominee for BidCo and each of bclMC's Indemnified Parties);
- (f) QH Investco (in its own right and separately as trustee or nominee for each of QH Investco's Indemnified Parties);
- (g) Brookfield (in its own right and separately as trustee or nominee for each of Brookfield's Indemnified Parties); and
- (h) Qube (in its own right and separately as trustee or nominee for each of Qube's Indemnified Parties),

each of the Asciano Representations and Warranties.

**7.12 Asciano's indemnity**

Asciano agrees with:

- (a) GIP (in its own right and separately as trustee or nominee for BidCo and each of GIP's Indemnified Parties) to indemnify GIP and each of GIP's Indemnified Parties;
- (b) CPPIB (in its own right and separately as trustee or nominee for BidCo and each of CPPIB's Indemnified Parties) to indemnify CPPIB and each of CPPIB's Indemnified Parties;
- (c) Shunrong (in its own right and separately as trustee or nominee for BidCo and each of Shunrong's Indemnified Parties) to indemnify Shunrong and each of Shunrong's Indemnified Parties;
- (d) GIC (in its own right and separately as trustee or nominee for BidCo and each of GIC's Indemnified Parties) to indemnify GIC and each of GIC's Indemnified Parties;
- (e) bclMC (in its own right and separately as trustee or nominee for BidCo and each of bclMC's Indemnified Parties) to indemnify bclMC and each of bclMC's Indemnified Parties;



- (f) QH Investco (in its own right and separately as trustee or nominee for each of QH Investco's Indemnified Parties) to indemnify QH Investco and each of QH Investco's Indemnified Parties;
  - (g) Brookfield (in its own right and separately as trustee or nominee for each of Brookfield's Indemnified Parties) to indemnify Brookfield and each of Brookfield's Indemnified Parties; and
  - (h) Qube (in its own right and separately as trustee or nominee for each of Qube's Indemnified Parties) to indemnify Qube and each of Qube's Indemnified Parties,
- from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that any of them suffers, incurs or is liable for arising out of any breach of any of the Asciano Representations and Warranties.

### 7.13 Survival of representations and warranties

Each representation and warranty made or given in this clause 7:

- (a) is severable;
- (b) survives the termination of this deed; and
- (c) is given with the intention that liability under it is not confined to breaches that are discovered before the date of termination of this deed.

### 7.14 Survival of indemnities

Each indemnity in this deed (including those in this clause 7):

- (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.

### 7.15 Timing of representations and warranties

Each representation and warranty made or given under this clause 7 is given at the date of this deed and repeated continuously thereafter until 8.00am on the Second Court Date unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.

## 8 Releases

### 8.1 Asciano and Asciano directors and officers

- (a) Each Rail Consortium Member, Ports Consortium Member and BAPS Consortium Member releases its rights, and agrees with Asciano that it will not make a claim, against any of Asciano's Indemnified Parties (other than Asciano and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:
  - (i) any breach of any representations and warranties of Asciano or any other member of the Asciano Group in this deed; 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 the relevant Indemnified Party has not acted in good

faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 8.1(a) limits the rights of the Rail Consortium, Ports Consortium and BAPS Consortium to terminate this deed under clause 13.2(a).

- (b) This clause 8.1 is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Asciano receives and holds the benefit of this clause 8.1 to the extent it relates to each of Asciano's Indemnified Party as trustee for each of them.

## 8.2 Other parties' directors and officers

- (a) Asciano releases its rights, and agrees with each Rail Consortium Member, Ports Consortium Member and BAPS Consortium Member that it will not make a claim, against any of their respective Indemnified Parties (other than a Rail Consortium Member, Ports Consortium Member or BAPS Consortium Member or any of their respective Related Bodies Corporate) as at the date of this deed and in connection with:
  - (i) any breach of any representations and warranties of a Rail Consortium Member, Ports Consortium Member or BAPS Consortium Member in this deed; 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 the relevant Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 8.2(a) limits Asciano's rights to terminate this deed under clause 13.2(b).

- (b) This clause 8.2 is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Each Rail Consortium Member, Ports Consortium Member and BAPS Consortium Member receives and holds the benefit of this clause 8.2 to the extent it relates to each of their respective Indemnified Parties as trustee for each of them.

## 8.3 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective and having been implemented, the Rail Consortium undertakes in favour of Asciano and each of Asciano's Indemnified Party that it will:
  - (i) subject to clause 8.3(f) and to the extent permitted by law, for a period of 7 years from the Implementation Date, ensure that the constitutions of Asciano and each other Asciano Group Member (other than PortsCo, BAPSCo or any of their respective Subsidiaries) continue to contain such rules as are contained in those constitutions as at the date of this deed 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 Asciano undertakes not to vary, and must ensure there is no variation of, those constitutional arrangements); and
  - (ii) procure that Asciano and each other Asciano Group Member (other than PortsCo, BAPSCo or any of their respective Subsidiaries) complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers as at the date of this deed (and Asciano 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 the date of this deed) 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 the Implementation Date.

- (b) Subject to the Scheme becoming Effective and completion under the Ports SPA having occurred, the Ports Consortium undertakes in favour of Asciano and each of Asciano's Indemnified Parties that it will:
- (i) subject to clause 8.3(g) and to the extent permitted by law, for a period of 7 years from the Implementation Date, ensure that the constitutions of PortsCo and each of its Subsidiaries continue to contain such rules as are contained in those constitutions as at the date of this deed 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 Asciano undertakes not to vary, and must ensure there is no variation of, those constitutional arrangements); and
  - (ii) procure that PortsCo 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 the date of this deed (and Asciano 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 the date of this deed) 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 the Implementation Date.
- (c) Subject to the Scheme becoming Effective and completion of the acquisition of BAPSCo under the BAPS SPA having occurred, Brookfield undertakes in favour of Asciano and each of Asciano's Indemnified Parties that it will:
- (i) subject to clause 8.3(h) and to the extent permitted by law, for a period of 7 years from the Implementation Date, ensure that the constitutions of BAPSCo and each of its Subsidiaries continue to contain such rules as are contained in those constitutions as at the date of this deed 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 Asciano undertakes not to vary, and must ensure there is no variation of, those constitutional arrangements); and
  - (ii) procure that BAPSCo 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 the date of this deed (and Asciano 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 the date of this deed) 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 the Implementation Date.
- (d) The undertakings contained in clauses 8.3(a), 8.3(b) and 8.3(c) are subject to any Corporations Act restriction and will be read down accordingly.
- (e) Asciano receives and holds the benefit of clauses 8.3(a), 8.3(b) and 8.3(c), to the extent they relate to Asciano's Indemnified Parties, as trustee for them.

- (f) The undertakings contained in clause 8.3(a) are given until the earlier of the end of the relevant period specified in clause 8.3(a) or the relevant Asciano Group Member ceasing to be a Related Body Corporate of BidCo.
- (g) The undertakings contained in clause 8.3(b) are given until the earlier of the end of the relevant period specified in clause 8.3(b) or PortsCo or the relevant Subsidiary of PortsCo (as applicable) ceasing to be a Related Body Corporate of Ports HoldCo.
- (h) The undertakings contained in clause 8.3(c) are given until the earlier of the end of the relevant period specified in clause 8.3(c) or BAPSCo or the relevant Subsidiary of BAPSCo (as applicable) ceasing to be a Related Body Corporate of BAPS HoldCo.
- (i) The Rail Consortium, Ports Consortium and BAPS Consortium acknowledge that, notwithstanding any other provision of this deed, Asciano may, prior to the Implementation Date, enter into a run-off insurance policy in respect of any of Asciano's Indemnified Parties for a 7 year period (or longer if the Rail Consortium, Ports Consortium and BAPS Consortium agree, each acting reasonably), and that any actions to facilitate that insurance or in connection therewith will not be an Asciano Prescribed Occurrence, Asciano Regulated Event or breach any provision of this deed, provided that Asciano has not acted unreasonably and has consulted with the Rail Consortium, Ports Consortium and BAPS Consortium (each of whom must act reasonably and not so as to cause delay) in entering into any such policy.

## **9 Public announcement**

### **9.1 Announcement of the Scheme and Asset Sales**

- (a) Immediately after the execution of this deed, Asciano, Brookfield and Qube must, after consultation with the other parties to this deed, each issue a public announcement in a form agreed to in writing between all parties to this deed.
- (b) Asciano agrees that its public announcement will include a unanimous recommendation by the Asciano Board to Asciano Shareholders that, in the absence of a Superior Proposal and subject to any unfavourable conclusion in the Independent Expert's Report, Asciano Shareholders vote in favour of the Scheme.

### **9.2 Public announcements**

Subject to clause 9.3, no public announcement or public disclosure of the Transactions or any other transaction the subject of a Transaction Document 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.

### **9.3 Required disclosure**

Where a party is required by applicable law or any applicable listing rules to make any announcement or to make any disclosure in connection with the Transactions or any other transaction the subject of a Transaction Document, it must use all reasonable endeavours, to the extent practicable and lawful, to consult with the other parties prior to making the relevant disclosure.

## **10 Confidentiality**

- (a) The parties acknowledge and agree that, after the date of this deed, they continue to be bound by the Confidentiality Agreements to which they are party. The rights and obligations of the parties under each Confidentiality Agreement survive termination of this deed. Subject to clause 10(b), 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.

- (b) Notwithstanding any other provision of this deed, any requirement of any party to provide information 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 Agreements prior to the date of the deed.

## 11 Exclusivity

### 11.1 No shop and no talk

During the Exclusivity Period, Asciano must not, and must ensure that each of its Related Persons does not, directly or indirectly, without the prior written consent of the Rail Consortium, Ports Consortium and BAPS Consortium:

- (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 Third Party 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 Third Party an intention to do anything referred to in this clause 11.1(a); or
- (b) **(no talk)** subject to clause 11.2:
  - (i) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any Third Party to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal by a Third Party or participate in or continue any negotiations or discussions with respect to any actual, proposed or potential Competing Proposal by a Third Party;
  - (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 by a Third Party;
  - (iii) disclose or otherwise provide any non-public information about the business or affairs of the Asciano Group to a Third Party (other than a Government 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 by a Third Party (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of the Asciano Group); or
  - (iv) communicate to any Third Party an intention to do anything referred to in the preceding paragraphs of this clause 11.1(b),

but nothing in this clause 11.1 prevents Asciano from making normal presentations to brokers, portfolio investors and analysts in the ordinary course of business or promoting the merits of the Transactions.

**11.2 Fiduciary exception**

Clause 11.1(b) does not prohibit any action or inaction by Asciano or any of its Related Persons in relation to an actual, proposed or potential Competing Proposal if compliance with that clause would, in the opinion of the Asciano 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 directors of Asciano, 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 11.1(a).

**11.3 Notification of approaches**

- (a) During the Exclusivity Period, Asciano must as soon as possible notify the Rail Consortium, Ports Consortium and BAPS Consortium in writing if it, or any of its Related Persons, 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 by a Third Party;
  - (ii) proposal made to Asciano or any of its Related Persons, in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal by a Third Party; or
  - (iii) provision by Asciano or any of its Related Persons of any non-public information concerning the business or operations of Asciano or the Asciano Group to any to a 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 paragraphs (i) to (iii) may only be taken by Asciano if not proscribed by clause 11.1 or if permitted by clause 11.2.
- (b) A notification given under clause 11.3(a) must include the identity of the relevant Third Party 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.

**11.4 Matching right**

- (a) Without limiting clause 11.1, during the Exclusivity Period, Asciano:
- (i) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which any Third Party, Asciano or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal by a Third Party; and
  - (ii) must use its best endeavours to procure that none of its directors change their recommendation in favour of the Transaction to publicly recommend an actual, proposed or potential Competing Proposal by a Third Party (or recommend against the Scheme),
- unless:
- (iii) the Asciano Board acting in good faith and in order to satisfy what the Asciano 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) Asciano has provided the Rail Consortium, Ports Consortium and BAPS Consortium 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) Asciano has given the Rail Consortium, Ports Consortium and BAPS Consortium at least 5 Business Days after the date of the provision of the information referred to in clause 11.4(a)(iv) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal; and
  - (vi) the Rail Consortium, Ports Consortium and BAPS Consortium have not announced a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal by the expiry of the 5 Business Day period in clause 11.4(a)(v).
- (b) If the Rail Consortium, Ports Consortium and BAPS Consortium propose to Asciano, or announces, amendments to the Transaction Documents 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 5 Business Day period in clause 11.4(a)(v), Asciano must procure that the Asciano Board considers the Bidder Counterproposal and if the Asciano Board, acting reasonably and in good faith, determines that the Bidder Counterproposal would provide an equivalent or superior outcome for Asciano Shareholders as a whole (other than Associated Shareholders) compared with the Competing Proposal, taking into account all of the terms and conditions of the Bidder Counterproposal, then Asciano, the Rail Consortium, Ports Consortium and BAPS Consortium must use their best endeavours to agree the amendments to this deed and, if applicable, the Scheme, Deed Poll and Sale Agreements that are reasonably necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable, and Asciano must use its best endeavours to procure that each of the directors of Asciano continues to recommend the Scheme (as modified by the Bidder Counterproposal) to Asciano Shareholders.

## 11.5 Cease discussions

- (a) Asciano must cease any discussions or negotiations existing as at the date of this deed relating to:
  - (i) any actual, proposed or potential Competing Proposal;
  - (ii) any transaction that would, or would reasonably be expected to, reduce the likelihood of success of any Transaction.
- (b) As soon as practicable, and in any event within 5 Business Days, following execution of this deed, to the extent it has not already done so, Asciano must request in writing (and diligently enforce) the immediate return or destruction of all Asciano'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 and terminate those persons' access to Asciano's confidential information on an ongoing basis.



## 11.6 Provision of information

- (a) During the Exclusivity Period, Asciano must as soon as possible provide the Rail Consortium, Ports Consortium and BAPS Consortium with:
  - (i) in the case of written materials, a copy of; and
  - (ii) in any other case, a written statement of,  
any non-public information about the business or affairs of Asciano or the Asciano Group disclosed or otherwise provided to any person in connection with an actual, proposed or potential Competing Proposal (***Due Diligence Information***) that has not previously been provided to all the members of the Rail Consortium, Ports Consortium and BAPS Consortium (provided that it will not be obliged to so comply in respect of any Due Diligence Information provided to Brookfield in connection with a proposal by Brookfield to acquire Asciano prior to 7 February 2016). For the avoidance of doubt, any such provision of Due Diligence Information may only be undertaken if permitted by clause 11.2. Nothing in this clause requires Asciano to provide any Commercially Sensitive or Competitive Information to Qube, but this is subject to clause 5.6.
- (b) In addition, Asciano agrees and acknowledges that, notwithstanding anything else in this deed or a Confidentiality Agreement, any Rail Consortium Member, Ports Consortium Member or BAPS Consortium Member may request Asciano's consent to disclose to another Rail Consortium Member, Ports Consortium Member or BAPS Consortium Member any Due Diligence Information it has received from Asciano. Asciano's consent will not be unreasonably withheld or delayed where such disclosure is consistent with any information handling protocols agreed between the parties under or in connection with any Confidentiality Agreement (including, without limitation, as such protocols relate to the disclosure of Commercially Sensitive or Competitive Information to Qube).

## 11.7 Legal advice

Asciano represents and warrants to the Rail Consortium, Ports Consortium and BAPS Consortium that:

- (a) prior to entering into this deed, it has received legal advice on this deed and the operation of this clause 11; and
- (b) it and the Asciano Board consider this clause 11 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 11 in order to secure the significant benefits to it, and the Asciano Shareholders resulting from the transactions contemplated hereby.

## 12 Reimbursement Fee

### 12.1 Background to Reimbursement Fee

- (a) The parties acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, each of GIP, CPPIB, Shunrong and Qube will incur significant costs, including those set out in clause 12.4.
- (b) In these circumstances, each of GIP, CPPIB, Shunrong and Qube requested that provision be made for the payments outlined in clause 12.2, without which each of GIP, CPPIB, Shunrong and Qube would not have entered into this deed or otherwise agreed to assist in implementing the Scheme and other Transactions.
- (c) The Asciano Board believes, having taken advice from Asciano's legal advisors and Financial Advisors, that the implementation of the Scheme and other Transactions will



provide benefits to Asciano and that it is appropriate for Asciano to agree to the payments referred to in clause 12.2 in order to secure each of GIP's, CPPIB's, Shunrong's and Qube's participation in the Transactions.

## 12.2 Reimbursement Fee triggers

Asciano must pay the Reimbursement Fee to GIP, CPPIB, Shunrong and Qube, without set-off or withholding, if:

- (a) a Competing Proposal of any kind is announced, either by a Third Party or by Asciano in connection with a Competing Proposal from a Third Party, 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 2, 3 or 4 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 12.2(a)(i), the Third Party or any Associate of that Third Party acquires Control of the Target; or
- (b) the Rail Consortium, Ports Consortium and BAPS Consortium (acting jointly) terminate this deed pursuant to clause 13.1(a)(i).

## 12.3 Timing of payment of Reimbursement Fee

- (a) A demand by GIP, CPPIB, Shunrong and Qube (acting jointly) for payment of the Reimbursement Fee under clause 12.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate one or more accounts into which the Reimbursement Fee must be paid.
- (b) Asciano must pay the Reimbursement Fee into each account nominated by each of GIP, CPPIB, Shunrong and Qube, without set-off or withholding, within two Business Days after receiving a demand for payment (and prior to any reconstitution of the Asciano Board following a Competing Proposal becoming unconditional) where each of GIP, CPPIB, Shunrong and Qube are entitled under clause 12.2 to the Reimbursement Fee in their Reimbursement Fee Respective Proportions.

## 12.4 Basis of Reimbursement Fee

The Reimbursement Fee has been calculated to reimburse each of GIP, CPPIB, Shunrong and Qube for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transactions (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Transactions or in not engaging in other alternative transactions or strategic initiatives, including costs arising from each of GIP, CPPIB, Shunrong 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 Transactions; and

- (d) out of pocket expenses incurred by each of GIP, CPPIB, Shunrong and Qube and their respective employees, advisers and agents in planning and implementing the Transactions,

and the parties agree that:

- (e) the costs actually incurred by each of GIP, CPPIB, Shunrong and Qube will be of such a nature that they cannot all be accurately ascertained; and
- (f) the Reimbursement Fee is a genuine and reasonable pre-estimate of those costs.

## 12.5 Compliance with law

- (a) This clause 12 does not impose an obligation on Asciano to pay the Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Reimbursement 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 Asciano .
- (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 12.5(a).

## 12.6 Reimbursement Fee payable only once

Where the Reimbursement Fee becomes payable to each of GIP, CPPIB, Shunrong and Qube under clause 12.2 and is actually paid to them, then none of GIP, CPPIB, Shunrong or Qube can make any claim against Asciano for payment of any subsequent Reimbursement Fee.

## 12.7 Other Claims

Notwithstanding any other provision of this deed but subject to clause 12.6:

- (a) the maximum aggregate liability of Asciano to all parties under or in connection with this deed including in respect of any breach of the deed will be the amount of the Reimbursement Fee;
- (b) subject to clause 12.7(d), a payment by Asciano in accordance with this clause 12 represents the sole and absolute liability of Asciano to any party under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Asciano to any party in connection with this deed;
- (c) the amount paid to each of GIP, CPPIB, Shunrong and Qube under this clause 12 shall be reduced by the amount of any loss or damage recovered by any other party in relation to a breach of clause 11 or any other clause of this deed; and
- (d) where clause 12.7(c) applies and the amount payable by Asciano under this clause 12 has already been paid, each of GIP, CPPIB, Shunrong and Qube must, within two Business Days of the event contemplated by clause 12.7(c) which would have reduced the amount payable, refund an amount to Asciano which is equivalent to that calculated under clause 12.7(c), with each of GIP, CPPIB, Shunrong and Qube responsible for that proportion of the refund equal to their Reimbursement Fee Respective Proportion.

**12.8 No Reimbursement Fee if Scheme Effective**

Despite anything to the contrary in this deed, no Reimbursement Fee will be payable if the Scheme becomes Effective, notwithstanding the occurrence of any event in clause 12.2 and, if a Reimbursement Fee has already been paid it must be refunded by each of GIP, CPPIB, Shunrong and Qube, with each of them responsible for that proportion of the refund equal to their Reimbursement Fee Respective Proportion.

**13 Termination****13.1 Termination for material breach**

- (a) The Rail Consortium, Ports Consortium and BAPS Consortium (acting jointly) or Asciano may terminate this deed by written notice to each other party:
  - (i) other than in respect of a breach of either a representation or warranty (which are dealt with in clause 13.2), at any time before 8.00am on the Second Court Date if:
    - (A) from the perspective of the Rail Consortium, Ports Consortium and BAPS Consortium (acting jointly), Asciano has materially breached this deed or, from the perspective of Asciano, any other party has materially breached this deed;
    - (B) the party or parties entitled to terminate has or have given written notice to the party or parties in breach of this deed setting out the relevant circumstances and stating an intention to terminate this deed; and
    - (C) the party that received the notice has failed to remedy the breach within 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given;
  - (ii) at any time before 8.00am on the Second Court Date if the Court or another Government Agency (including any other court) has taken any action permanently restraining or otherwise prohibiting or preventing the Transactions, or has refused to do anything necessary to permit the Transactions, 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 3.4; or
  - (iv) if the Effective Date for the Scheme has not occurred, or will not occur, on or before the End Date.
- (b) The Rail Consortium, Ports Consortium and BAPS Consortium (acting jointly) may terminate this deed by written notice to Asciano until 8.00am on the Second Court Date if:
  - (i) an Asciano Material Adverse Change or an Asciano Prescribed Occurrence occurs; or
  - (ii) any Asciano Board Member fails to recommend the Scheme or any Asciano Board Member withdraws, adversely revises or adversely modifies his or her recommendation that Asciano Shareholders (other than Associated Shareholders) vote in favour of the Scheme or any Asciano Board Member makes a public statement indicating that he or she no longer recommends the Scheme or recommending, supporting or endorsing another transaction (including any Competing Proposal).
- (c) Asciano may terminate this deed by written notice to the other parties at any time before 8.00am on the Second Court Date if the Asciano Board or a majority of the Asciano

Board has changed, withdrawn or modified its recommendation as permitted under clause 5.9 and Asciano has complied with all of its obligations under clause 12.

- (d) If, after the Scheme becomes Effective, one or more of the Sale Agreements is terminated due to a default by Asciano, then the Rail Consortium, Ports Consortium and BAPS Consortium (acting jointly) may terminate this deed by written notice to each other party.
- (e) If, after the Scheme becomes Effective, one or more of the Sale Agreements is terminated due to a default by a party to the Sale Agreement other than Asciano, then Asciano may terminate this deed by written notice to each other party.

### **13.2 Termination for breach of representations and warranties**

- (a) The Rail Consortium, Ports Consortium and BAPS Consortium (acting jointly) may, at any time prior to 8.00am on the Second Court Date, terminate this deed for breach of an Asciano Representation and Warranty only if:
  - (i) the Rail Consortium, Ports Consortium and BAPS Consortium have given written notice to Asciano setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
  - (ii) the relevant breach continues to exist 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 13.2(a)(i); and
  - (iii) the relevant breach is material in the context of the Scheme as a whole.
- (b) Asciano may, at any time before 8.00am on the Second Court Date, terminate this deed for breach of a representation and warranty given by any other party in clause 7 only if:
  - (i) Asciano has given written notice to the other parties setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
  - (ii) the relevant breach continues to exist 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 13.2(b)(i); and
  - (iii) the relevant breach is material in the context of the Scheme taken as a whole.
- (c) This deed is terminable if agreed to in writing by the parties.

### **13.3 Effect of termination**

If this deed is terminated by any party under clauses 3.4, 13.1 or 13.2:

- (a) each party will be released from its obligations under this deed, except that this clause 13.3, and clauses 1, 7, 8, 10, 12, 14, 15, 16, 17, 18 and 19 (except clause 19.10), will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against the other parties 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 Scheme.

**13.4 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 the other parties stating that it terminates this deed and the provision under which it is terminating this deed.

**13.5 No other termination**

No party may terminate or rescind this deed except as permitted under clauses 3.4, 13.1 or 13.2.

**14 Duty, costs and expenses****14.1 Stamp duty**

The Rail Consortium must procure that BidCo:

- (a) pays all stamp duties and any fines and penalties with respect to stamp duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme; and
- (b) indemnifies Asciano against any liability arising from its failure to comply with clause 14.1(a),

except to the extent otherwise agreed by the parties in writing or except to the extent that a Sale Agreement expressly 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.

**14.2 Costs and expenses**

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution, delivery and performance of this deed and the proposed, attempted or actual implementation of this deed and the Transactions.

**15 Several obligations****15.1 Rail Consortium**

- (a) Where this deed imposes any obligation or liability on the Rail Consortium (including an obligation on the Rail Consortium Members to procure that BidCo undertakes a specified action), that obligation or liability is imposed on the Rail Consortium Members severally in their Rail Consortium Respective Proportions, and no Rail Consortium Member will have any liability in respect of such obligation or liability beyond its Rail Consortium Respective Proportion.
- (b) Where this deed contains a representation or warranty given by the Rail Consortium, that representation or warranty is given by the Rail Consortium Members severally in their Rail Consortium Respective Proportions, and no Rail Consortium Member will have any liability in respect of such representation or warranty beyond its Rail Consortium Respective Proportion.
- (c) Where this deed confers a right on the Rail Consortium, that right must be exercised by the Rail Consortium Members jointly.
- (d) Where this deed requires any consent from the Rail Consortium, that consent may only be given by the Rail Consortium Members jointly.

**15.2 Ports Consortium**

- (a) Where this deed imposes any obligation or liability on the Ports Consortium (including an obligation on the Ports Consortium Members to procure that Ports HoldCo undertakes a specified action) that obligation or liability is imposed on the Ports Consortium Members

severally in their Ports Consortium Respective Proportions, and no Ports Consortium Member will have any liability in respect of such obligation or liability beyond its Ports Consortium Respective Proportion.

- (b) Where this deed contains a representation or warranty given by the Ports Consortium, that representation or warranty is given by the Ports Consortium Members severally in their Ports Consortium Respective Proportions, and no Ports Consortium Member will have any liability in respect of such representation or warranty beyond its Ports Consortium Respective Proportion.
- (c) Where this deed confers a right on the Ports Consortium, that right must be exercised by the Ports Consortium Members jointly.
- (d) Where this deed requires any consent from the Ports Consortium, that consent may only be given by the Ports Consortium Members jointly.

### 15.3 BAPS Consortium

- (a) Where this deed imposes any obligation or liability on the BAPS Consortium (including an obligation on the BAPS Consortium Members to procure that BAPS HoldCo undertakes a specified action) that obligation or liability is imposed on the BAPS Consortium Members severally in their BAPS Consortium Respective Proportions, and no BAPS Consortium Member will have any liability in respect of such obligation or liability beyond its BAPS Consortium Respective Proportion.
- (b) Where this deed contains a representation or warranty given by the BAPS Consortium, that representation or warranty is given by the BAPS Consortium Members severally in their BAPS Consortium Respective Proportions, and no BAPS Consortium Member will have any liability in respect of such representation or warranty beyond its BAPS Consortium Respective Proportion.
- (c) Where this deed confers a right on the BAPS Consortium, that right must be exercised by the BAPS Consortium Members jointly.
- (d) Where this deed requires any consent from, the BAPS Consortium that consent may only be given by the BAPS Consortium Members jointly.

## 16 GST

- (a) Any consideration or amount payable under this deed, including any non-monetary consideration (as reduced in accordance with clause 16(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this deed, an additional amount (**Additional Amount**) is payable by the party providing Consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 16(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 16(b):

- (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
  - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
  - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in this deed if an amount payable under or in connection with this deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term starting with a capital letter that is not defined in this deed has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

## 17 Trustee limitation of liability

Notwithstanding any other provision in this Deed:

- (a) Global Infrastructure Management Australia Pty Ltd (ACN 132 664 745) and bclMC Nitro Trustee Inc. (each a **Trustee**) enter into this Deed only in their capacity as trustee of the GIP Bell Australia Unit Trust and the bclMC Nitro Investment Trust respectively (in each case, 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 17 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 17(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 17(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 17(a) to 17(c).

## 18 Notices

### 18.1 Form of Notice

A notice or other communication to a party under this deed (**Notice**) must be:

- (a) in writing and in English; and
- (b) addressed to that party as nominated below (or any alternative details nominated to the sending party by Notice):

Party	Address	Addressee	Email
Asciano	Level 6 15 Blue Street North Sydney NSW Australia, 2060	Lyndall Stoyles	<a href="mailto:Lyndall_Stoyles@asciano.com.au">Lyndall_Stoyles@asciano.com.au</a>
	Copy to King & Wood Mallesons Level 42, 600 Bourke Street Melbourne VIC 3000	Stephen Minns	<a href="mailto:Stephen.minns@au.kwm.com">Stephen.minns@au.kwm.com</a>
GIP	12 East 49th Street, 38th Floor New York. New York 10017, USA	Julie Ashworth	<a href="mailto:Julie.Ashworth@global-infra.com">Julie.Ashworth@global-infra.com</a>
	Copy to Allens Deutsche Bank Place 126 Phillip St Sydney NSW 2000	Guy Alexander and Tom Story	<a href="mailto:Guy.Alexander@allens.com.au">Guy.Alexander@allens.com.au</a> <a href="mailto:Tom.Story@allens.com.au">Tom.Story@allens.com.au</a>
CPPIB	One Queen Street East, Suite 2500, Toronto, Ontario M5C 2W5 Canada	Bruce Hogg and Paul Bernath	<a href="mailto:bhogg@cppib.com">bhogg@cppib.com</a> <a href="mailto:pbernath@cppib.com">pbernath@cppib.com</a>
	Copy to Allens Level 37 101 Collins Street Melbourne VIC 3000	Wendy Rae	<a href="mailto:Wendy.Rae@allens.com.au">Wendy.Rae@allens.com.au</a>

Party	Address	Addressee	Email
<b>Shunrong</b>	1939, 19/F, No. 1 Chaoyangmen Beidajie, Dongcheng District Beijing, 100010, China	Ms. Wang Yan and Mr. Bao Jianmin	<a href="mailto:wangy@china-inv.cn">wangy@china-inv.cn</a> <a href="mailto:baojm@china-inv.cn">baojm@china-inv.cn</a>
	Copy to Jones Day 88 Phillip St Sydney NSW 2000	Mark Crean and Robert Speed	<a href="mailto:mcrean@jonesday.com">mcrean@jonesday.com</a> <a href="mailto:rspeed@jonesday.com">rspeed@jonesday.com</a>
<b>GIC</b>	168 Robinson Road, #37- 01, Capital Tower, Singapore 068912	Paul Barr and Chin Hau Boon	<a href="mailto:paulbarr@gic.com.sg">paulbarr@gic.com.sg</a> <a href="mailto:boonchinhau@gic.com.sg">boonchinhau@gic.com.sg</a>
	Herbert Smith Freehills Level 34, ANZ Tower 161 Castlereagh Street Sydney NSW 2000	Philippa Stone	<a href="mailto:Philippa.stone@hsf.com">Philippa.stone@hsf.com</a>
<b>bcIMC</b>	300-2950 Jutland Road, Victoria, BC, V8T 5K2	Lincoln Webb	<a href="mailto:privateplacements@bcimc.com">privateplacements@bcimc.com</a>
	Herbert Smith Freehills Level 34, ANZ Tower 161 Castlereagh Street Sydney NSW 2000	Philippa Stone	<a href="mailto:Philippa.stone@hsf.com">Philippa.stone@hsf.com</a>
<b>QH Investco</b>	Legal Department Qatar Holding LLC Q-Tel Tower Diplomatic Area Street, West Bay Doha, Qatar	Office of General Counsel	<a href="mailto:notices.legal@qatarholding.qa">notices.legal@qatarholding.qa</a>
	Freshfields Bruckhaus Deringer 10 Collyer Quay 42-01 Ocean Financial Centre Singapore 049315	Gavin MacLaren	<a href="mailto:gavin.maclaren@freshfields.com">gavin.maclaren@freshfields.com</a>
<b>Brookfield</b>	73 Front Street Hamilton, HM 12 Bermuda	Jane Sheere	<a href="mailto:Jane.sheere@brookfield.com">Jane.sheere@brookfield.com</a>
	Copy to Brookfield Level 22 135 King Street Sydney NSW 2000	Michael Ryan	<a href="mailto:Michael.ryan@au.brookfield.com">Michael.ryan@au.brookfield.com</a>
	Herbert Smith Freehills Level 34, ANZ Tower 161 Castlereagh Street Sydney NSW 2000	Philippa Stone	<a href="mailto:Philippa.stone@hsf.com">Philippa.stone@hsf.com</a>
<b>Qube</b>	Level 27, 45 Clarence Street Sydney NSW, 2000	William Hara	<a href="mailto:william.hara@qube.com.au">william.hara@qube.com.au</a>
	Copy to	Andrew Bullock	<a href="mailto:ABullock@gtlaw.com.au">ABullock@gtlaw.com.au</a>

Party	Address	Addressee	Email
	Gilbert + Tobin Level 37, 2 Park Street Sydney NSW 2000		

## 18.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (business hours period), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By pre paid post to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date of posting
By email to the nominated email address	<p>The earliest to occur of:</p> <ul style="list-style-type: none"> <li>(i) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;</li> <li>(ii) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and</li> <li>(iii) 2 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 2 hour period, an automated message that the email has not been delivered.</li> </ul>

## 18.3 Notice must not be given by electronic communication

A Notice must not be given by electronic means of communication (other than email as permitted in clause 18.2).

## 19 General

### 19.1 Governing law and jurisdiction

- (a) This deed is governed by the law in force in New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

**19.2 Service of process**

Without preventing any other mode of service, any document in an 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.

**19.3 No merger**

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

**19.4 Invalidity and enforceability**

- (a) If any provision of this deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 19.4(a) does not apply where enforcement of the provision of this deed in accordance with clause 19.4(a) would materially affect the nature or effect of the parties' obligations under this deed.

**19.5 Waiver**

No party to this deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this clause 19.5 are set out below.

Term	Meaning
<b>conduct</b>	includes delay in the exercise of a right.
<b>right</b>	any right arising under or in connection with this deed and includes the right to rely on this clause.
<b>waiver</b>	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

**19.6 Variation**

A variation of any term of this deed must be in writing and signed by the parties.

**19.7 Assignment of rights**

- (a) A party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this deed without the prior written consent of the other party.
- (b) A breach of clause 19.7(a) by a party shall be deemed to be a material breach for the purposes of clause 13.1(a)(i).
- (c) Clause 19.7(b) does not affect the construction of any other part of this deed.

**19.8 Acknowledgement**

Each party acknowledges that the remedy of damages may be inadequate to protect the interests of the parties for a breach of clause 11 and that each Rail Consortium Member, Ports Consortium

Member and BAPS Consortium Member is entitled to seek and obtain without limitation injunctive relief if Asciano breaches clause 11.

#### **19.9 No third party beneficiary**

This deed shall be binding on and inure solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this deed is intended to or shall confer on any other person, other than the Indemnified Parties to the extent set forth in clause 7, any third party beneficiary rights.

#### **19.10 Further action to be taken at each party's own expense**

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

#### **19.11 Entire agreement**

This deed, the Sale Agreements and the Confidentiality Agreements 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.

#### **19.12 Counterparts**

This deed may be executed in any number of counterparts.

#### **19.13 Relationship of the parties**

- (a) Nothing in this deed gives a party authority to bind any other party in any way.
- (b) Nothing in this deed imposes any fiduciary duties on a party in relation to any other party.

#### **19.14 Remedies cumulative**

Except as provided in this deed and permitted by law, the rights, powers and remedies provided in this deed are cumulative with, and not exclusive of, the rights, powers and remedies provided by law independently of this deed.

#### **19.15 Exercise of rights**

- (a) Unless expressly required by the terms of this deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.

**Schedule 1****Definitions and interpretation****1 Definitions**

<b>Term</b>	<b>Meaning</b>
<b>AAT</b>	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 Asciano Group.
<b>ACCC</b>	the Australian Competition and Consumer Commission.
<b>ACFS</b>	ACFS Port Logistics Pty Limited (ACN 603 120 047).
<b>Affiliate</b>	<p>a person is an "affiliate" of Brookfield if one is directly or indirectly controlled by Brookfield or if both are directly or indirectly controlled by a third person and includes a partnership or other fund or account which is managed by BAM or any of its Subsidiaries; and for the purposes of this definition, and the definition of "BIP Group", only "control" of a person means the right to:</p> <ol style="list-style-type: none"> <li>1. elect or appoint a majority of the directors (or persons or entities performing a similar function) of such person;</li> <li>2. the ability to otherwise exercise a majority of the voting rights in respect of that person; or</li> <li>3. the ability to otherwise control the management of such person whether by virtue of the terms of its constitutional documents, contractual rights, or otherwise;</li> </ol> <p>and "controlled" has a corresponding meaning.</p>
<b>Asciano Board</b>	the board of directors of Asciano and an <b>Asciano Board Member</b> means any director of Asciano comprising part of the Asciano Board.
<b>Asciano Consolidated Tax Group</b>	the consolidated group of which Asciano is the head company (where 'consolidated group' and 'head company' have the same meaning as in the Tax Act).
<b>Asciano EBITDA</b>	earnings before interest expense, tax, depreciation and amortisation and significant and non-recurring items, consistent with "underlying EBITDA" and the equity accounted income in Asciano's financial reports from time to time.
<b>Asciano Group</b>	Asciano and each of its Subsidiaries, and a reference to a ' <b>Asciano Group Member</b> ' or a ' <b>member of the Asciano Group</b> ' is to Asciano or any of its Subsidiaries.
<b>Asciano Executive Incentive Plan Rules</b>	the employee incentive plan rules of that name issued by Asciano.
<b>Asciano Information</b>	all information to be included by Asciano in the Scheme Booklet that explains the effect of the Scheme and sets out the information prescribed by the Corporations Act and Corporations Regulations,

Term	Meaning
	<p>and any other information that is material to the making of a decision by Asciano Shareholders whether or not to vote in favour of the Scheme, being information that is within the knowledge of each of the Asciano Board Members included in the Scheme Booklet other than:</p> <ol style="list-style-type: none"> <li>1 the Rail Consortium Information;</li> <li>2 the Ports Consortium Information;</li> <li>3 the BAPS Consortium Information; and</li> <li>4 the Independent Expert's Report,</li> </ol> <p>and includes any information provided by Asciano to the Rail Consortium, Ports Consortium or BAPS Consortium or obtained by any of them from Asciano's public filings on ASX and ASIC contained in, or used in the preparation of, the Rail Consortium Information, Ports Consortium Information or BAPS Consortium Information.</p>
<b>Asciano Interim Dividend</b>	the interim dividend on Asciano Shares in respect of the half-year ending 31 December 2015 of A\$0.13 per Asciano Share.
<b>Asciano Long Term Incentive Plan Rules</b>	the employee incentive plan rules of that name issued by Asciano.
<b>Asciano Material Adverse Change</b>	<p>an event, change, condition, matter, circumstance or thing occurring before, on or after the date of this deed (each a <b>Specified Event</b>) 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:</p> <ol style="list-style-type: none"> <li>1 a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Asciano Group taken as a whole; or</li> <li>2 without limiting the generality of paragraph 1 above: <ol style="list-style-type: none"> <li>(a) the effect of a diminution in the value of the consolidated net tangible assets of: <ol style="list-style-type: none"> <li>(i) the Asciano 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</li> <li>(ii) 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</li> </ol> </li> <li>(b) the effect of a diminution in: <ol style="list-style-type: none"> <li>(i) the consolidated Asciano EBITDA of the Asciano Group, taken as a whole, by at</li> </ol> </li> </ol> </li> </ol>



Term	Meaning
	<p>least 10% in any financial year for the Asciano Group; or</p> <p>(ii) the Ports and BAPS EBITDA, by at least 20% in the FY 16 financial year for the Asciano Group,</p> <p>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) FY15 consolidated Asciano EBITDA or FY15 Ports and BAPS EBITDA (as the case may be),</p> <p>other than those events, changes, conditions, matters, circumstances or things:</p> <p>3 required or permitted by a Transaction Document or a Transaction;</p> <p>4 that are Fairly Disclosed in the Disclosure Materials;</p> <p>5 agreed to in writing by the Rail Consortium, Ports Consortium and BAPS Consortium;</p> <p>6 that Asciano Fairly Disclosed in an announcement made by Asciano to ASX, or a document lodged by it with ASIC that is publicly available, since January 2014;</p> <p>7 resulting from changes in law or in general economic, political or business conditions; or</p> <p>8 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 Asciano and its competitors in a similar manner.</p>
<b>Asciano Permitted Special Dividend</b>	the payment by Asciano of a special dividend of up to A\$0.90 per Asciano Share, as referred to in clause 4.6 (and subject to the limitation in relation to franking and the size of the Asciano Permitted Special Dividend referred to in that clause).
<b>Asciano Prescribed Occurrence</b>	<p>other than as:</p> <p>1 required or permitted by a Transaction Document or a Transaction;</p> <p>2 Fairly Disclosed in the Disclosure Materials;</p> <p>3 agreed to in writing by the Rail Consortium (in respect of any matter impacting the Asciano Group (other than to the extent any such impact relates only to the Ports Businesses and/or BAPS Businesses)), Ports Consortium (in respect of any matter impacting the Ports Businesses) or BAPS Consortium (in respect of any matter impacting the BAPS Businesses) (in each case, such agreement not to be unreasonably withheld or delayed); or</p> <p>4 Fairly Disclosed by Asciano in an announcement made by</p>

Term	Meaning
	<p>Asciano to ASX, or a document lodged by it with ASIC that is publicly available, since 1 January 2014,</p> <p>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):</p>
5	Asciano converting all or any of its shares into a larger or smaller number of shares;
6	Asciano reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares (other than any on market acquisition of shares to satisfy the vesting of any Asciano Rights listed in Schedule 4 or which have been granted as permitted by this deed);
7	the Asciano Representation and Warranty in paragraph (j) of Schedule 2 being inaccurate;
8	<p>Asciano or any Subsidiary 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 member, or announcing an intention to do any of the above, other than:</p> <ul style="list-style-type: none"> <li>(a) to a directly or indirectly wholly-owned Subsidiary of Asciano;</li> <li>(b) paying the Asciano Interim Dividend or Asciano Permitted Special Dividend; or</li> <li>(b) any pro rata distribution to members made by an entity of which Asciano or any Subsidiary is a member;</li> </ul>
9	Asciano making any change to its constitution;
10	Asciano or any Subsidiary resolving to reduce its share capital in any way other than to a directly or indirectly wholly-owned Subsidiary of Asciano;
11	<p>Asciano or any Subsidiary:</p> <ul style="list-style-type: none"> <li>(a) entering into a buy-back agreement; or</li> <li>(b) resolving to approve the terms of a buy-back agreement under the Corporations Act;</li> </ul>
12	<p>a member of the Asciano Group issuing shares, or granting an option over its shares (provided that the issue or grant of an Asciano 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:</p> <ul style="list-style-type: none"> <li>(a) to a directly or indirectly wholly-owned Subsidiary of Asciano; or</li> </ul>

Term	Meaning
	(b) the issue of shares upon the vesting of any of Asciano Rights where Asciano believes, acting reasonably, that the purchase of shares on market may be a breach of law;
13	a member of the Asciano Group issuing or agreeing to issue securities convertible into shares (including any issue or grant of Asciano Rights) other than to: <ul style="list-style-type: none"> <li>(a) a directly or indirectly wholly-owned Subsidiary of Asciano;</li> <li>(b) a grant of Asciano Rights resulting in the total of number of Asciano Rights on issue not exceeding 3,358,581;</li> <li>(c) a grant of an additional number of Asciano Rights that may be granted under the current FY16 STI plan calculated in accordance with the arrangements Fairly Disclosed in the Disclosure Letter; or</li> <li>(d) if the Scheme has not been implemented prior to 30 June 2016, a grant of Asciano Rights for FY 17 in the ordinary course of Asciano's business not exceeding 50,000 Asciano Rights in aggregate;</li> </ul>
14	a member of the Asciano Group disposing, or agreeing to dispose, of the whole, or a substantial part, of the Asciano Group's business or property;
15	a member of the Asciano Group granting a Security Interest, or agreeing to grant a Security Interest, in the whole, or a substantial part, of the Asciano Group's business or property;
16	an Insolvency Event occurs in relation to a member of the Asciano Group;
17	a member of the Asciano Group: <ul style="list-style-type: none"> <li>(a) acquiring or disposing of;</li> <li>(b) agreeing to acquire or dispose of; or</li> <li>(c) offering, proposing or announcing a bid for, any business, assets, entity or undertaking, the value of which exceeds A\$30,000,000 individually or A\$100,000,000 in aggregate;</li> </ul>
18	a member of the Asciano Group: <ul style="list-style-type: none"> <li>(a) entering into any contract or commitment requiring payments by the Asciano Group in excess of: <ul style="list-style-type: none"> <li>(i) in respect of the Asciano Group as a whole, A\$100,000,000 (individually or in aggregate); or</li> </ul> </li> </ul>

Term	Meaning
	<ul style="list-style-type: none"> <li>(ii) in respect of the Ports Businesses or BAPS Businesses, A\$30,000,000 individually;</li> <li>(b) (without limiting the foregoing) agreeing to incur capital expenditure from the date of this deed of more than: <ul style="list-style-type: none"> <li>(i) in respect of the Asciano Group as a whole, A\$100,000,000 (individually or in aggregate); or</li> <li>(ii) in respect of the Ports Businesses or BAPS Businesses, A\$30,000,000 individually; or</li> </ul> </li> <li>(c) waiving any material Third Party default where the financial impact on the Asciano Group will be in excess of: <ul style="list-style-type: none"> <li>(i) in respect of the Asciano Group as a whole, A\$50,000,000 (individually or in aggregate); or</li> <li>(ii) in respect of the Ports Businesses or BAPS Businesses, A\$30,000,000 individually;</li> </ul> </li> </ul>
19	<p>a member of the Asciano Group:</p> <ul style="list-style-type: none"> <li>(a) terminating any Material Contract; or</li> <li>(b) varying, amending or modifying any Material Contract;</li> </ul>
20	a member of the Asciano Group entering into, or resolving to enter into, a transaction with any related party of Asciano (other than a related party that is a member of the Asciano Group), as defined in section 228 of the Corporations Act;
21	a member of the Asciano Group amending in any material respect any agreement or arrangement with a Financial Advisor, or entering into an agreement or arrangement with a new Financial Advisor, in respect of the Scheme or a Competing Proposal;
22	<p>a member of the Asciano Group paying any of its directors, officers or senior executives a termination or retention payment (other than in accordance with contractual arrangements in effect on the date of this deed and which are contained in the Disclosure Materials) unless:</p> <ul style="list-style-type: none"> <li>(a) such termination or retention payments are not in excess of A\$5,000,000 (in aggregate); and</li> <li>(b) Asciano has consulted with the Rail Consortium, Ports Consortium and BAPS Consortium in respect</li> </ul>

Term	Meaning
	of such payments;
23	the occurrence of any review event or event of default after the date of this deed under any third party loan to Asciano or a 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 an Asciano Material Adverse Change;
24	Asciano Shares cease to be quoted on the ASX; or
25	Asciano contravenes the Corporations Act, and such contravention results in an Asciano Material Adverse Change.
<b>Asciano Regulated Event</b>	other than as:
1	required or permitted by a Transaction Document or a Transaction;
2	Fairly Disclosed in the Disclosure Materials;
3	agreed to in writing by the Rail Consortium (in respect of any matter impacting the Asciano Group (other than to the extent any such impact relates only to the Ports Businesses and/or BAPS Businesses)), Ports Consortium (in respect of any matter impacting the Ports Businesses) or BAPS Consortium (in respect of any matter impacting the BAPS Businesses) (in each case, such agreement not to be unreasonably withheld or delayed); or
4	Fairly Disclosed by Asciano in an announcement made by Asciano to ASX, or a document lodged by it with ASIC that is publicly available, since 1 January 2014,
	the occurrence of any of the following:
1	a member of the Asciano Group commencing business activities of a nature not already carried out as at the date of this deed, whether by way of acquisition or otherwise;
2	a member of the Asciano Group, other than in the ordinary course of business, entering into a contract or commitment restraining a member of the Asciano Group from competing with any person or conducting activities in any market;
3	a member of the Asciano Group providing financial accommodation other than to members of the Asciano Group (irrespective of what form that accommodation takes) in excess of A\$50,000,000 (individually or in aggregate);
4	a member of the Asciano Group 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

Term	Meaning
	the ordinary course of business;
5	<p>a member of the Asciano Group entering into or materially altering, varying or amending any employment, consulting, severance or similar agreement or arrangement with one or more of its officers, directors, other executives or employees, or accelerating or otherwise materially increasing compensation or benefits for any of the above, in each case other than pursuant to:</p> <p>(a) contractual arrangements in effect on the date of this deed and which are contained in the Disclosure Materials; or</p> <p>(b) Asciano's policies and guidelines in effect on the date of this deed and which are contained in the Disclosure Materials,</p> <p>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;</p>
6	a member of the Asciano Group entering into any enterprise bargaining agreement other than in the ordinary course of business or pursuant to contractual arrangements in effect on the date of this deed and which are contained in the Disclosure Materials;
7	a member of the Asciano Group 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
8	a member of the Asciano Group doing anything that would result in a change in the Asciano Consolidated Tax Group.
<b>Asciano Registry</b>	Computershare Investor Services Pty Ltd ACN 078 279 277.
<b>Asciano Representations and Warranties</b>	the representations and warranties of Asciano set out in Schedule 2
<b>Asciano Right</b>	<p>either:</p> <p>1 a performance right or a deferred right granted pursuant to the Asciano Executive Incentive Plan Rules; or</p> <p>2 a performance right granted pursuant to the Asciano Long Term Incentive Plan Rules.</p>
<b>Asciano Share</b>	a fully paid ordinary share in the capital of Asciano
<b>Asciano Shareholder</b>	each person who is registered as the holder of an Asciano Share in the Asciano Share Register.
<b>Asciano Share Register</b>	the register of members of Asciano maintained in accordance with the Corporations Act.
<b>ASIC</b>	the Australian Securities and Investments Commission.

<b>Term</b>	<b>Meaning</b>
<b>Asset Disposals</b>	<p>1 the disposal by Asciano of PortsCo under the Ports SPA; and</p> <p>2 the disposal by Asciano of BAPSCo under the BAPS SPA.</p>
<b>Associate</b>	has the meaning set out in section 12 of the Corporations Act, as if subsection 12(1) of the Corporations Act included a reference to this deed and Asciano was the designated body.
<b>Associated Shareholder</b>	each Rail Consortium Member, Ports Consortium Member and BAPS Consortium Member and each of their respective Related Bodies Corporate
<b>ASX</b>	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
<b>BAM</b>	Brookfield Asset Management Inc.
<b>BAPS Consortium</b>	collectively Brookfield, GIC, QH Investco and bcIMC.
<b>BAPS Consortium Information</b>	information regarding the BAPS Consortium (including the BAPS Consortium's intentions in relation to the matters referred to in paragraph 8310 of Schedule 8 to the Corporations Regulations) provided by the BAPS Consortium to Asciano in writing for inclusion in the Scheme Booklet which sets out the information on those subjects prescribed by the Corporations Act and Corporations Regulations, and any other information on those subjects that is material to the making of a decision by Asciano Shareholders whether or not to vote in favour of the Scheme being, in each case, information that is within the knowledge of a BAPS Consortium Member (excluding any information provided by Asciano to the BAPS Consortium Member or obtained from Asciano's public filings on ASX, and used by the BAPS Consortium Member for the purposes of preparation of the BAPS Consortium Information). For the avoidance of doubt, the BAPS Consortium Information excludes the Asciano Information, Ports Consortium Information, Rail Consortium Information and Independent Expert's Report.
<b>BAPS Consortium Member</b>	an entity that is part of the BAPS Consortium.
<b>BAPS Consortium Respective Proportions</b>	<p>with respect to:</p> <p>1 Brookfield, 67%;</p> <p>2 GIC, 11%;</p> <p>3 QH Investco, 11%; and</p> <p>4 bcIMC, 11%.</p>
<b>BAPSCo</b>	Asciano Holdings (General & Bulk) Pty Ltd (ACN 123 683 885).
<b>BAPS Businesses</b>	the entities, businesses and assets comprising the Bulk & Automotive Port Services business of the Asciano Group, as well as Asciano Group's 50% shareholding interest in AAT and the Asciano Group's 50% interest in ACFS. For the avoidance of doubt,



Term	Meaning
	this includes the Asciano Group's regional road and rail business, and excludes the Asciano Group's CargoLink business.
<b>BAPS HoldCo</b>	BAPS BidCo Pty Ltd (ACN 611 189 381).
<b>BAPS SPA</b>	the share purchase agreement dated on the date of this deed between BAPS HoldCo, Brookfield Infrastructure Partners Limited as general partner of Brookfield Infrastructure Partners L.P. and Asciano pursuant to which Asciano agrees to sell, and BAPS HoldCo agrees to purchase, all of the issued shares in BAPSCo, on and subject to the terms and conditions of that agreement.
<b>BidCo</b>	a proprietary company to be incorporated under the Corporations Act, the issued shares of which are owned by an entity that is directly or indirectly owned by the Rail Consortium Members (or, in respect of any Rail Consortium Member, one or more of its Related Bodies Corporate), except as disclosed to Asciano.
<b>BIF</b>	Brookfield Infrastructure Fund II and any subsequent similar fund exclusively managed by Brookfield or its Affiliates.
<b>BIP</b>	BIPL in its capacity as general partner of Brookfield Infrastructure Partners L.P. or, where appropriate, Brookfield Infrastructure Partners L.P.
<b>BIP Group</b>	Brookfield, BIP and each person that BIP directly or indirectly controls (where "control" has the meaning given to it in the definition of "Affiliate") and a reference to a ' <b>BIP Group Member</b> ' or a ' <b>member of the BIP Group</b> ' is to BIP and any such controlled person.
<b>BIPL</b>	Brookfield Infrastructure Partners Limited, a Bermuda exempted limited company
<b>Brookfield Group</b>	collectively BIP, BAM and BIF and each of their Affiliates, and a reference to a ' <b>Brookfield Group Member</b> ' or a ' <b>member of the Brookfield Group</b> ' is to any of those persons.
<b>Business Day</b>	any day that is each of the following: <ol style="list-style-type: none"> <li>1 a Business Day within the meaning of the Listing Rules; and</li> <li>2 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 Sunday, or a day which is a public holiday in the People's Republic of China).</li> </ol>
<b>Claim</b>	any claim, demand, legal proceedings or cause of action (including any claim, demand, legal proceedings or cause of action: <ol style="list-style-type: none"> <li>1 based in contract, including breach of warranty;</li> <li>2 based in tort, including misrepresentation or negligence;</li> <li>3 under common law or equity; or</li> <li>4 under statute, including the Australian Consumer Law</li> </ol>

Term	Meaning
	<p>(being Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) (<b>CCA</b>)) or Part VI of the CCA, or like provision in any state or territory legislation,</p> <p>in any way relating to this deed or the Transactions, and includes a claim, demand, legal proceedings or cause of action arising under an indemnity in this deed.</p>
<b>Commercially Sensitive or Competitive Information</b>	<p>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 Rail Consortium, Ports Consortium and BAPS Consortium, includes any non-public information in relation to the Rail Consortium Members', Ports Consortium Members' or BAPS Consortium Members' investment businesses and portfolio or investee companies or those of any of their respective Related Bodies Corporate.)</p>
<b>Competing Proposal</b>	<p>any proposal, agreement, arrangement or transaction (other than the Transactions contemplated by this deed), which, if entered into or completed, would result in a person (either alone or together with any Associate):</p> <ol style="list-style-type: none"> <li>1 directly or indirectly acquiring a Relevant Interest in, or have a right to acquire, a legal, beneficial or economic interest in, or control of, 20% or more of the Asciano Shares or of the share capital of any material Subsidiary of Asciano;</li> <li>2 acquiring Control of Asciano or any material Subsidiary of Asciano;</li> <li>3 directly or indirectly acquiring or becoming the holder of, or otherwise acquire or have a right to acquire, a legal, beneficial or economic interest in, or control of, all or a material part of Asciano's business or assets or the business or assets of the Asciano Group (and for this purpose, each of the Ports Businesses and the Pacific National intermodal business is to be considered a material part of Asciano's business);</li> <li>4 otherwise directly or indirectly acquiring or merging with Asciano or a material Subsidiary of Asciano; or</li> <li>5 requiring Asciano to abandon, or otherwise fail to proceed with, the Scheme,</li> </ol> <p>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,</p>

<b>Term</b>	<b>Meaning</b>
	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).
<b>Condition Precedent</b>	each of the conditions set out in clause 3.1.
<b>Conditional Transfer Agreements</b>	the Conditional Transfer Agreements under which all of the Asciano Shares held by each Excluded Shareholder will be transferred to BidCo on implementation of the Scheme, on the terms set out in those agreements.
<b>Confidentiality Agreements</b>	<ol style="list-style-type: none"> <li>the confidentiality agreement between Brookfield Infrastructure Group (Australia) Pty Limited and Asciano Executive Services Pty Ltd dated 15 June 2015, as amended; and</li> <li>the Mutual Confidentiality Deed dated 20 November 2015 between GIP, CPPIB, Qube and Asciano.</li> </ol>
<b>Control</b>	has the meaning given in section 50AA of the Corporations Act.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Corporations Regulations</b>	the <i>Corporations Regulations 2001</i> (Cth).
<b>Court</b>	the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed to in writing by the Rail Consortium and Asciano.
<b>Deed Poll</b>	a deed poll substantially in the form of Attachment 2 under which the Rail Consortium and BidCo each covenants in favour of the Scheme Shareholders to perform the obligations attributed to the Rail Consortium and BidCo under the Scheme.
<b>Director Asciano Share</b>	<p>any Asciano Share:</p> <ol style="list-style-type: none"> <li>held by or on behalf of an Asciano Board Member; or</li> <li>listed as an indirect interest in an Appendix 3X or Appendix 3Y lodged by Asciano with ASX in respect of any Asciano Board Member.</li> </ol>
<b>Disclosure Letter</b>	the letter identified as such provided by Asciano to the other parties and countersigned by or on behalf of the other parties on or about the date of this deed.
<b>Disclosure Materials</b>	<ol style="list-style-type: none"> <li>the documents and information contained in the data room made available by Asciano to Qube and certain of its Related Persons, the index of which has been initialled by, or on behalf of, the relevant parties for identification;</li> <li>the document containing the written responses from Asciano and its Related Persons to requests for further information made by Qube and certain of its Related Persons, a copy of which has been initialled by, or on</li> </ol>

Term	Meaning
	behalf of, the relevant parties for identification;
3	the documents and information contained in the data room made available by Asciano to GIP, CPPIB and certain of their respective Related Persons, the index of which has been initialled by, or on behalf of, the relevant parties for identification;
4	the document containing the written responses from Asciano and its Related Persons to requests for further information made by GIP, CPPIB and certain of their respective Related Persons, a copy of which has been initialled by, or on behalf of, the relevant parties for identification;
5	the documents and information contained in the data room made available by Asciano to Brookfield and its Related Persons, the index of which has been initialled by, or on behalf of, the relevant parties for identification;
6	the document containing the written responses from Asciano and its Related Persons to requests for further information made by Brookfield and its Related Persons, a copy of which has been initialled by, or on behalf of, the relevant parties for identification; and
7	the Disclosure Letter.
<b>Effective</b>	when used in relation to the Scheme, the coming into effect, under subsection 411(10) of the Corporations Act, of the order of the Court made under paragraph 411(4)(b) of the Corporations Act in relation to the Scheme.
<b>Effective Date</b>	the date on which the Scheme becomes Effective.
<b>End Date</b>	15 August 2016, or such other later date as agreed in writing by the parties.
<b>Excluded Shareholders</b>	means: <ol style="list-style-type: none"> <li>1 Global Infrastructure Management Australia Pty Limited as trustee of the GIP Bell Australia Unit Trust in respect of the 77,032,604 Asciano Shares held by it;</li> <li>2 Perpetual Corporate Trust Limited as trustee of the CPPIB Australia Trust in respect of the 51,916,055 Asciano Shares held by it;</li> <li>3 CPPIB in respect of the 1,547,348 Asciano Shares held on its behalf by HSBC Custody Nominees (Australia) Limited;</li> <li>7 Qube in respect of the 61,301,584 Asciano Shares held by it; and</li> <li>8 Nitro Corporation Pty Limited in respect of the 188,065,605 Asciano Shares held by it.</li> </ol>
<b>Exclusivity Period</b>	the period from and including the date of this deed to the earlier of:

Term	Meaning
	<ol style="list-style-type: none"> <li>the date of termination of this deed;</li> <li>the End Date; and</li> <li>the Effective Date.</li> </ol>
<b>FATA</b>	the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth).
<b>Fairly Disclosed</b>	a reference to 'Fairly Disclosed' means publicly disclosed to ASIC or ASX or disclosed to the relevant party or its Related Persons to the extent that, and in sufficient detail so as to enable, a reasonable person (or one of its Related Persons) experienced in transactions similar to the Scheme and transactions under the Sale Agreements, and experienced in a business similar to any business conducted by the Asciano Group, to identify the nature and scope of the relevant matter, event or circumstance.
<b>Financial Advisor</b>	any financial advisor retained by a party in relation to the Transactions or a Competing Proposal from time to time.
<b>First Court Date</b>	the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.
<b>FY</b>	financial year
<b>Government Agency</b>	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, including a stock or other securities exchange, or any minister of the Crown in right of the Commonwealth of Australia or any State or Territory, and any other federal, state, territorial, provincial or local government, whether foreign or Australian.
<b>Implementation Date</b>	<p>the later of:</p> <ol style="list-style-type: none"> <li>the fifth Business Day after the Scheme Record Date; and</li> <li>the first Business Day after completion under both Sale Agreements has occurred,</li> </ol> <p>or such other date as the parties agree in writing.</p>
<b>Indemnified Parties</b>	<ol style="list-style-type: none"> <li>of Asciano, means the Subsidiaries of Asciano and the directors, officers and employees of Asciano and each of its Subsidiaries;</li> <li>of GIP, means the Related Bodies Corporate of GIP, BidCo and the directors, officers and employees of GIP and each of its Related Bodies Corporate and BidCo;</li> <li>of CPPIB, means the Related Bodies Corporate of CPPIB, BidCo and the directors, officers and employees of CPPIB and each of its Related Bodies Corporate and BidCo;</li> <li>of Shunrong, means the Related Bodies Corporate of</li> </ol>

Term	Meaning
	Shunrong, BidCo and the directors, officers and employees of Shunrong and each of its Related Bodies Corporate and BidCo;
5	of GIC, means the Related Bodies Corporate of GIC, BidCo, Ports HoldCo, BAPS HoldCo and the directors, officers and employees of GIC, each of its Related Bodies Corporate, BidCo, Ports Holdco and BAPS HoldCo;
6	of bclMC, means the Related Bodies Corporate of bclMC, BidCo, Ports HoldCo, BAPS HoldCo and the directors, officers and employees of bclMC, each of its Related Bodies Corporate, BidCo, Ports Holdco and BAPS HoldCo;
7	of QH Investco, means the Related Bodies Corporate of QH Investco, Ports HoldCo, BAPS HoldCo and the directors, officers and employees of QH Investco, each of its Related Bodies Corporate, Ports Holdco and BAPS HoldCo;
8	of Brookfield, means BAM, its Affiliates, Ports HoldCo, BAPS HoldCo and the directors, officers and employees of Brookfield, BAM, its Affiliates, Ports Holdco and BAPS HoldCo; and
9	of Qube, means the Related Bodies Corporate of Qube, Ports HoldCo and the directors, officers and employees of Qube, each of its Related Bodies Corporate and Ports Holdco.
<b>Independent Expert</b>	the independent expert in respect of the Scheme appointed by Asciano.
<b>Independent Expert's Report</b>	the report to be issued by the Independent Expert in connection with the Scheme
<b>Insolvency Event</b>	means, in relation to an entity: <ol style="list-style-type: none"> <li>the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity;</li> <li>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;</li> <li>the entity executing a deed of company arrangement;</li> <li>the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;</li> <li>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</li> </ol>

Term	Meaning
	financial support from its parent entity such that it is able to pay its debts; or
	6 the entity being deregistered as a company or otherwise dissolved.
<b>Listing Rules</b>	the official listing rules of ASX.
<b>Material Contract</b>	any agreement, contract, deed or other arrangement or instrument to which a member of the Asciano Group is a party that is identified as such in the Disclosure Letter.
<b>Nominated Representatives</b>	<p>1 In the case of GIP, Rob Stewart and Russell Smith (or such other individual(s) as GIP may notify in writing to the other parties from time to time).</p> <p>2 In the case of CPPIB, any two of Bruce Hogg, Neil King and Paul Bernath (or such other individual(s) as CPPIB may notify in writing to the other parties from time to time).</p> <p>3 In the case of Shunrong, Ms. Wang Yan and Mr. Bao Jianmin (or such other individual(s) as Shunrong may notify in writing to the other parties from time to time).</p> <p>4 In the case of GIC, Paul Barr and Chin Hau Boon (or such other individual(s) as GIC may notify in writing to the other parties from time to time).</p> <p>5 In the case of bclMC, Lincoln Webb and Jerry Divoky (or such other individual(s) as bclMC may notify in writing to the other parties from time to time).</p> <p>6. In the case of QH Investco, Haywood Blakemore and Deven Karnik (or such other individual(s) as QH Investco may notify in writing to the other parties from time to time).</p> <p>7. In the case of Brookfield, Michael Ryan and Stewart Upson (or such other individual(s) as Brookfield may notify in writing to the other parties from time to time).</p> <p>8 In the case of Qube, Maurice James and William Hara (or such other individual(s) as Qube may notify in writing to the other parties from time to time).</p> <p>9 In the case of Asciano, Saul Cannon and Lyndall Stoyles (or such other individual(s) as Asciano may notify in writing to the other parties from time to time).</p>
<b>OIO Legislation</b>	the <i>Overseas Investment Act 2005</i> (NZ) and <i>Overseas Investment Regulations 2005</i> (NZ)
<b>PortsCo</b>	Asciano Holdings (Containers) Pty Ltd (ACN 123 684 060).
<b>Ports and BAPS EBITDA</b>	the earnings before interest expense, tax, depreciation and amortisation and significant and non-recurring items, consistent with “underlying EBITDA” as defined in Asciano’s 2015 Annual Report of the Ports Businesses and BAPS Businesses taken together.



<b>Term</b>	<b>Meaning</b>
<b>Ports Businesses</b>	the entities, businesses and assets comprising the Terminals & Logistics business of the Asciano Group. For the avoidance of doubt, this includes the Asciano Group's CargoLink business, and excludes the Asciano Group's regional road and rail business and the Asciano Group's 50% interest in AAT and the Asciano Group's 50% interest in ACFS.
<b>Ports Consortium</b>	collectively Brookfield, Qube, GIC, QH Investco and bclMC.
<b>Ports Consortium Member</b>	each entity that is part of the Ports Consortium.
<b>Ports Consortium Information</b>	information regarding the Ports Consortium (including the Ports Consortium's intentions in relation to the matters referred to in paragraph 8310 of Schedule 8 to the Corporations Regulations) provided by the Ports Consortium to Asciano in writing for inclusion in the Scheme Booklet which sets out the information on those subjects prescribed by the Corporations Act and Corporations Regulations, and any other information on those subjects that is material to the making of a decision by Asciano Shareholders whether or not to vote in favour of the Scheme being, in each case, information that is within the knowledge of a Ports Consortium Member (excluding any information provided by Asciano to the Ports Consortium Member or obtained from Asciano's public filings on ASX, and used by the Ports Consortium Member for the purposes of preparation of the Ports Consortium Information). For the avoidance of doubt, the Ports Consortium Information excludes the Asciano Information, BAPS Consortium Information, Rail Consortium Information and Independent Expert's Report.
<b>Ports Consortium Respective Proportion</b>	with respect to: <ol style="list-style-type: none"> <li>1 Brookfield, 33.5%;</li> <li>2 Qube, 50%;</li> <li>3 GIC, 5.5%;</li> <li>4. QH Investco, 5.5%; and</li> <li>4 bclMC, 5.5%.</li> </ol>
<b>Ports HoldCo</b>	Patrick Terminals BidCo Pty Ltd (ACN 611 133 861).
<b>Ports SPA</b>	the share purchase agreement dated on this deed between Ports HoldCo, Brookfield Infrastructure Partners Limited as general partner of Brookfield Infrastructure Partners L.P., Qube and Asciano pursuant to which Asciano agrees to sell, and Ports HoldCo agrees to purchase, all of the issued shares in PortsCo, on and subject to the terms and conditions of that agreement.
<b>Rail Consortium</b>	collectively GIP, CPPIB, Shunrong, GIC and bclMC.
<b>Rail Consortium Member</b>	an entity that is part of the Rail Consortium.
<b>Rail Consortium Respective Proportion</b>	with respect to: <ol style="list-style-type: none"> <li>1 GIP, 27%;</li> </ol>

Term	Meaning
	2 CPPIB, 33%;
	3 Shunrong, 16%;
	4 GIC, 12%; and
	5 bclMC, 12%.
<b>Rail Consortium Information</b>	information regarding the Rail Consortium (including the Rail Consortium's intentions in relation to the matters referred to in paragraph 8310 of Schedule 8 to the Corporations Regulations) provided by the Rail Consortium to Asciano in writing for inclusion in the Scheme Booklet which sets out the information on those subjects prescribed by the Corporations Act and Corporations Regulations, and any other information on those subjects that is material to the making of a decision by Asciano Shareholders whether or not to vote in favour of the Scheme being, in each case, information that is within the knowledge of a Rail Consortium Member (excluding any information provided by Asciano to the Rail Consortium Member or obtained from Asciano's public filings on ASX, and used by the Rail Consortium Member for the purposes of preparation of the Rail Consortium Information). For the avoidance of doubt, the Rail Consortium Information excludes the Asciano Information, BAPS Consortium Information, Ports Consortium Information and Independent Expert's Report.
<b>RG 60</b>	Regulatory Guide 60 issued by ASIC in September 2011.
<b>Regulator's Draft</b>	the draft of the Scheme Booklet in a form which is agreed to between the parties and that is provided to ASIC for approval pursuant to subsection 411(2) of the Corporations Act
<b>Regulatory Approval</b>	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 clause 3.1(a).
<b>Reimbursement Fee</b>	an amount equal to A\$88 million (exclusive of GST).
<b>Reimbursement Fee Respective Proportion</b>	with respect to: <ol style="list-style-type: none"> <li>1. GIP, 20.57%;</li> <li>2. CPPIB, 34.28%;</li> <li>3. Shunrong, 13.71%; and</li> <li>4. Qube, 31.44%.</li> </ol>
<b>Related Bodies Corporate</b>	has the meaning set out in section 50 of the Corporations Act, except that the term "subsidiary" used in the Corporations Act shall have the meaning ascribed to the term "Subsidiary" 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: <ol style="list-style-type: none"> <li>1 a Related Body Corporate of GIP includes:</li> </ol>

Term	Meaning
	<p>(a) Global Infrastructure Management, LLC and its Related Bodies Corporate; and</p> <p>(b) Global Infrastructure Partners II-A, L.P., its parallel investment entities and alternative investment vehicles, and each of their respective Related Bodies Corporate;</p>
2	a Related Body Corporate of Shunrong means China Investment Corporation ( <b>CIC</b> ) 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); and
3	a Related Corporation of QH Investco means Qatar Investment Authority and its Subsidiaries.
<b>Related Person</b>	<p>1 in respect of a party, each director, officer, employee, advisor, agent or representative of that party or its Related Body Corporate;</p> <p>2 in respect of a Financial Advisor, each director, officer, employee or contractor of that Financial Advisor; and</p> <p>3 for the purposes of the definition of Disclosure Materials and Fairly Disclosed only:</p> <p>(a) in respect of BIP, BIF II, bclMC, GIC and QH Investco, includes each of the other of those parties and their respective Related Persons (as defined by reference to paragraphs 1 and 2 above);</p> <p>(b) in respect of Qube, GIP, CPPIB and Shunrong, includes each of the other of those parties and their respective Related Persons (as defined by reference to paragraphs 1 and 2 above); and</p> <p>(c) in respect of bclMC and GIC, includes GIP, CPPIB and Shunrong and their respective Related Persons (as defined by reference to paragraphs 1 and 2 above).</p>
<b>Relevant Interest</b>	has the meaning given in sections 608 and 609 of the Corporations Act.
<b>Sale Agreements</b>	the Ports SPA and the BAPS SPA.
<b>Scheme</b>	the scheme of arrangement under Part 5.1 of the Corporations Act between Asciano and the Scheme Shareholders, the form of which is attached as Attachment 2, subject to any alterations or conditions as agreed between the Rail Consortium and Asciano in writing or made or required by the Court under subsection 411(6) of the Corporations Act and agreed to by the Rail Consortium and

Term	Meaning
	Asciano.
<b>Scheme Booklet</b>	<p>the document to be prepared by Asciano in respect of the Scheme in accordance with clause 5.1(a) in a form agreed between the parties to be despatched to the Asciano Shareholders and which must include or be accompanied by:</p> <ol style="list-style-type: none"> <li>1 a copy of the Scheme;</li> <li>2 an explanatory statement complying with the requirements of the Corporations Act, the Corporations Regulations, RG 60, and the terms and conditions of any ASIC relief or exemption and any ASX waiver or confirmation and any ASIC relief or exemption;</li> <li>3 the Independent Expert's Report;</li> <li>4 a copy or summary of this deed;</li> <li>5 a copy of the executed Deed Poll;</li> <li>6 a notice of Scheme Meeting; and</li> <li>7 a proxy form for the Scheme Meeting.</li> </ol>
<b>Scheme Consideration</b>	has the meaning given in clause 4.4(a).
<b>Scheme Meeting</b>	the meeting of Asciano Shareholders (other than Associated Shareholders) ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.
<b>Scheme Record Date</b>	5.00pm on the tenth Business Day after the Effective Date or such other time and date as the parties agree in writing.
<b>Scheme Shares</b>	all Asciano Shares held by the Scheme Shareholders as at the Scheme Record Date.
<b>Scheme Shareholder</b>	a holder of Asciano Shares recorded in the Asciano Share Register as at the Scheme Record Date (other than an Excluded Shareholder).
<b>Second Court Date</b>	the first day on which an application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application or appeal is heard.
<b>Security Interest</b>	has the meaning given in section 51A of the Corporations Act
<b>Special Dividend Payment Date</b>	any date which is after the Special Dividend Record Date and before the Scheme Record Date and otherwise agreed between the parties.
<b>Special Dividend Record Date</b>	5.00pm on a date which is at least two days prior to the Scheme Record Date and otherwise agreed between the parties.
<b>Subsidiary</b>	in relation to an entity, has the meaning given in Division 6 of Part 1.2 of the Corporations Act but so that:

Term	Meaning
	<p>1 an entity will also be deemed to be a “Subsidiary” of an entity if that entity is required by the accounting standards to be consolidated with that entity;</p> <p>2 a trust or fund may be a “Subsidiary”, for the purposes of which any units or other beneficial interests will be deemed shares; or</p> <p>3 a corporation or trust or fund may be a “Subsidiary” of a trust or fund if it would have been a Subsidiary if that trust or fund were a corporation.</p>
<b>Superior Proposal</b>	<p>a bona fide Competing Proposal of the kind referred to in any of paragraphs 2, 3 or 4 of the definition of Competing Proposal (and not resulting from a breach by Asciano of any of its obligations under clause 11 of this deed (it being understood that any actions by the Related Persons of Asciano in breach of clause 11 shall be deemed to be a breach by Asciano for the purposes hereof)) which the Asciano Board, acting in good faith, and after receiving written legal advice from its external legal advisor and written advice from its financial advisor, determines:</p> <p>1 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;</p> <p>2 would, if completed substantially in accordance with its terms, be more favourable to Asciano Shareholders (as a whole) than the Transactions (as the Transactions have been amended or varied following application of the matching right set out in clause 11.4, if applicable), taking into account all terms and conditions of the Competing Proposal (including, consideration, conditionality, funding, certainty and timing).</p> <p>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 Asciano received, negotiated or was otherwise involved with at any time before the date of this deed.</p>
<b>Tax Act</b>	the <i>Income Tax Assessment Act 1997</i> (Cth).
<b>Third Party</b>	a person other than a Rail Consortium Member, Ports Consortium Member or BAPS Consortium Member or any of their respective Associates.
<b>Timetable</b>	the indicative timetable for the implementation of the Transactions set out in Attachment 1.
<b>Transaction Documents</b>	this deed and the Sale Agreements.

Term	Meaning	
<b>Transactions</b>	1	the acquisition by BidCo of all of the Scheme Shares under the Scheme;
	2	the acquisition by Ports HoldCo of all of the issued shares in PortsCo under the Ports SPA; and
	3	the acquisition by BAPS HoldCo of all of the issued shares in BAPSCo under the BAPS SPA.

## 2 Interpretation

### 2.1 General

In this deed:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to this deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney, New South Wales;
- (k) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1 of this Schedule 1, has the same meaning when used in this deed;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision;
- (n) a reference to a body (including an institute, association or authority), other than a party to this deed, whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

- (o) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (p) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;
- (q) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (r) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (s) if an act prescribed under this deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day; and
- (t) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

## **2.2 Interpretation of inclusive expressions**

Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.

## **2.3 Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

## **2.4 References to Brookfield**

In this deed a reference to a right or obligation of Brookfield confers that right, or imposes that obligation, as the case may be, jointly and severally on BIPL as general partner of BIP and BIF II GP as general partner of BIF II.



## Schedule 2

### Asciano Representations and Warranties

- (a) **Asciano Information:** The Asciano Information contained in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Asciano Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement.
- (b) **Basis of Asciano Information:** The Asciano Information:
  - (i) will be prepared and included in the Scheme Booklet in good faith and on the understanding that the other parties and their respective Indemnified Parties will rely on that information for the purpose of determining to proceed with the Transactions; and
  - (ii) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60, and the terms and conditions of any ASIC relief or exemption and any ASX waiver or confirmation and any ASIC relief or exemption,

and all information provided by Asciano 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 Independent Expert's Report;
- (c) **new information:** it will, as a continuing obligation (but in respect of the Rail Consortium Information, Ports Consortium Information and the BAPS Consortium Information, only to the extent that the Rail Consortium, Ports Consortium or BAPS Consortium provides Asciano with updates to the relevant information), ensure that the Scheme Booklet is updated (or, if the parties agree, the market is otherwise informed by way of announcement) to include all further or new information which arises after the Scheme Booklet has been despatched to Asciano Shareholders (other than Associated Shareholders) until the date of the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive (including by way of omission);
- (d) **validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of Asciano;
- (f) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (g) **no default:** this deed does not conflict with or result in the breach of or a default under:
  - (i) any provision of Asciano's constitution; or
  - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other Asciano Group Member is bound, and other than as Fairly Disclosed in its Disclosure Letter it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;
- (h) **deed binding:** as a continuing obligation, this deed is a valid and binding obligation of Asciano, enforceable in accordance with its terms;

- (i) **continuous disclosure:** on the date of this deed, the First Court Date, the date the Scheme Booklet is despatched, the date of the Scheme Meeting, and the Second Court Date, Asciano has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure;
- (j) **capital structure:** as a continuing obligation, its capital structure, including all issued securities as at the date of this deed, is as set out in Schedule 3 and Schedule 4 and it has not 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 Asciano Shares other than as set out in Schedule 3 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 Asciano Shares, options, warrants, performance rights or other securities or instruments in Asciano other than as Fairly Disclosed in its Disclosure Letter or this agreement or otherwise as required by this deed;
- (k) **interest:** any company, partnership, trust, joint venture or other enterprise in which Asciano or another Asciano Group Member owns or has a material interest in is as notified in writing by Asciano to the other parties prior to entry into this deed;
- (l) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to it or another Asciano 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;
- (m) **compliance:** each member of the Asciano Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Government Agencies having jurisdiction over them and have all material licenses, authorisations and permits necessary for them to conduct the business of the Asciano Group as presently being conducted;
- (n) **advisors:** it has provided fee estimates, which have been prepared in good faith and have a reasonable basis, for its advisors in relation to the Scheme and any Competing Proposals where such retainer or mandate is current, or under which the Asciano Group still has obligations;
- (o) **Disclosure Materials:** it has collated and prepared all of its Disclosure Materials in good faith in response to particular written requests for information from the other parties for the purposes of a due diligence process and in this context, as far as Asciano is aware, its Disclosure Materials have been collated with all reasonable care and skill;
- (p) **all information:** it is not aware of any information relating to the Asciano 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 an Asciano Material Adverse Change that has not been publicly disclosed in a document, schedule, report or form furnished or filed with ASX or ASIC or in its Disclosure Materials; and
- (q) **not misleading:** all information it has provided to the Independent Expert, pursuant to clause 5.1(p)) or otherwise, or to the other parties, 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 any of the other parties not misleading in a material respect.

**Schedule 3****Capital details**

<b>Asciano Limited</b>	
<b>Security</b>	<b>Total number on issue</b>
Asciano Shares	975,385,664
Asciano Rights	As set out in Schedule 4

**Schedule 4****Asciano Rights**

<b>Asciano Right</b>	<b>Number of Asciano Rights granted and outstanding as at the date of this deed</b>
<b>FY13 Long Term Incentive Plan</b>	480,871
<b>FY14 Long Term Incentive Plan</b>	862,677
<b>FY15 Long Term Incentive Plan</b>	867,149
<b>FY16 Long Term Incentive Plan</b>	652,157
<b>FY 14 Short Term Incentive Plan – Tranche 2</b>	184,873
<b>FY 15 Short Term Incentive Plan – Tranche 1</b>	152,345
<b>FY 15 Short Term Incentive Plan – Tranche 2</b>	152,323
<b>Total</b>	<b>3,352,395</b>

**Schedule 5****Indicative Timetable**

Event	Day
Announcement and signing of scheme implementation deed	The date of this deed
Scheme Booklet provided to ASIC in draft	Early April 2016
First Court Date	Late April 2016
Scheme Meeting	Early June 2016
Second Court hearing	Early June 2016
Effective Date	Early June 2016
Asciano Permitted Special Dividend record date	Mid June 2016
Asciano Permitted Special Dividend payment date	Late June 2016
Scheme Record Date	Late June 2016
The Business Day before Implementation Date <ul style="list-style-type: none"> <li>• Deposit of aggregate Scheme Consideration into Asciano trust account.</li> <li>• Completion of the Sale Agreements.</li> </ul>	Late June 2016
Implementation Date <ul style="list-style-type: none"> <li>• Transfer of Scheme Shares to BidCo.</li> <li>• Payment of Scheme Consideration to Scheme Shareholders.</li> </ul>	Late June 2016

**Execution pages**

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 Limited** in its capacity as  
trustee of the **GIP Bell Australia Unit  
Trust**.




Director Signature



Print Name



Director/Secretary Signature



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

**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

**Execution pages**

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 Ltd** 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

**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



**Execution pages**

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 Limited** 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

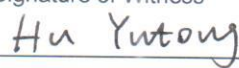
\_\_\_\_\_  
Signature of Authorised Signatory

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

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

**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

**Signed Sealed and Delivered by Buckland  
Investment Pte Limited** in the presence of:

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

JARLAH PRATT  
\_\_\_\_\_  
Name of Witness


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

PAUL BARR  
\_\_\_\_\_  
Name of Authorised Signatory

**Signed Sealed and Delivered** by bcIMC Nitro  
Trustee Inc., in its capacity as trustee of the  
bcIMC Nitro Investment Trust by:

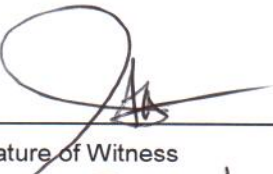
  
\_\_\_\_\_  
Signature of Authorised Signatory


LINCOLN WEBB  
\_\_\_\_\_  
Name of Authorised Signatory (block letters)

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

NATASHA OUDRIE  
\_\_\_\_\_  
Name of Witness (block letters)

**Signed Sealed and Delivered by Asciano Investment Company** in the presence of:

  
\_\_\_\_\_  
Signature of Witness  
John Haynes  
\_\_\_\_\_  
Name of Witness

  
\_\_\_\_\_  
Signature of Authorised Signatory  
Abdulla Bin Mohammed Bin Saud  
\_\_\_\_\_  
Name of Authorised Signatory Al-Thani

**Signed Sealed and Delivered by Brookfield Infrastructure Partners L.P.** by its general partner **Brookfield Infrastructure Partners Limited** by:

\_\_\_\_\_  
Position

\_\_\_\_\_  
Name

**Signed Sealed and Delivered by BIF II GP Bermuda Limited** as general partner of **BIF II Nitro AIV (Bermuda) LP** in the presence of:

\_\_\_\_\_  
Position

\_\_\_\_\_  
Name

\_\_\_\_\_

**Signed Sealed and Delivered** by **Asciano Investment Company** in the presence of:

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

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

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

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

**Signed Sealed and Delivered** by **Brookfield Infrastructure Partners L.P.** by its general partner **Brookfield Infrastructure Partners Limited** by:

\_\_\_\_\_  
Position

**Secretary**

\_\_\_\_\_  
Name

**Jane Sheere**

**Signed Sealed and Delivered** by **BIF II GP Bermuda Limited** as general partner of **BIF II Nitro AIV (Bermuda) LP** in the presence of:

\_\_\_\_\_  
Position

**Secretary**

\_\_\_\_\_  
Name

**Jane Sheere**

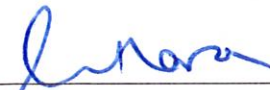
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Scheme Implementation Deed

Allens < Linklaters

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

  
\_\_\_\_\_  
Director Signature  
**MAURICE JAMES**  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Director/Secretary Signature  
**William KARA**  
\_\_\_\_\_  
Print Name

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

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

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

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

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

Scheme Implementation Deed

Allens < Linklaters

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

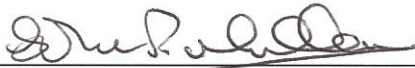
\_\_\_\_\_  
Director Signature

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

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

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

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

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

John Mullen  
\_\_\_\_\_  
Print Name

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

Lyndall Stoyles  
\_\_\_\_\_  
Print Name



**Attachment 1**

**Scheme of arrangement**

## Scheme of Arrangement

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

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This scheme of arrangement is made under section 411 of the *Corporations Act 2001* (Cth).

**Between the parties**

- 1 **Asciano Limited** (ACN 123 652 862) of Level 6, 15 Blue Street North Sydney, NSW 2060 (**Asciano**).
- 2 Each holder of Asciano Shares recorded in the Asciano Share Register as at the Scheme Record Date (other than an Excluded Shareholder) (each a **Scheme Shareholder** and together the **Scheme Shareholders**).

**It is agreed** as follows.

**1 Definitions, interpretation and Scheme components**

**1.1 Definitions**

Schedule 1 contains definitions used in this Scheme.

**1.2 Interpretation**

Schedule 1 contains interpretation rules for this Scheme.

**1.3 Scheme components**

This Scheme includes any schedule to it.

**2 Preliminary matters**

- (a) Asciano is a public company limited by shares, registered in Victoria, and has been admitted to the official list of the ASX. Asciano Shares are quoted for trading on the ASX.
- (b) As at [\*] 2016:
  - (i) 975,385,664 Asciano Shares were on issue; and
  - (ii) it is anticipated that up to [\*] Asciano Rights will vest and become Asciano Shares prior to the Scheme becoming Effective.
- (c) The Rail Consortium comprises:
  - (i) Global Infrastructure Management Australia Pty Limited (ACN 132 664 745) in its capacity as trustee of the GIP Bell Australia Unit Trust;
  - (ii) Beijing Shunrong Investment Corporation;
  - (iii) Buckland Investment Pte Ltd;
  - (iv) bclMC Nitro Trustee Inc., in its capacity as trustee of the bclMC Nitro Investment Trust; and
  - (v) Canada Pension Plan Investment Board.
- (d) BidCo, an entity directly or indirectly owned by the Rail Consortium, is a company limited by shares registered in Victoria.
- (e) If this Scheme becomes Effective:
  - (i) BidCo must provide, and the Rail Consortium must procure that BidCo provides, the Scheme Consideration to the Scheme Shareholders in accordance with and subject to the terms of this Scheme and the Deed Poll; and

- (ii) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, must be transferred to BidCo and Asciano will enter the name of BidCo in the Asciano Share Register in respect of the Scheme Shares.
- (f) By executing the Implementation Deed, Asciano has agreed to propose and implement this Scheme, and the Rail Consortium has agreed to assist with that proposal and implementation, on and subject to the terms and conditions of the Implementation Deed.
- (g) This Scheme attributes actions to the Rail Consortium and BidCo but does not itself impose an obligation on them to perform those actions. The Rail Consortium and BidCo have agreed, by executing the Deed Poll, to perform the actions attributed to them under this Scheme, including BidCo providing and the Rail Consortium procuring that BidCo provides the Scheme Consideration to the Scheme Shareholders, subject to the terms of the Deed Poll.

### **3 Conditions**

#### **3.1 Conditions precedent**

This Scheme is conditional on and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) all the conditions in clause 3.1 of the Implementation Deed (other than the condition in the Implementation Deed relating to Court approval of this Scheme) having been satisfied or waived in accordance with the terms of the Implementation Deed by 8.00am on the Second Court Date;
- (b) neither the Implementation Deed nor the Deed Poll having been terminated in accordance with their terms before 8.00am on the Second Court Date;
- (c) approval of this Scheme by the Court under paragraph 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under subsection 411(6) of the Corporations Act and agreed to by the Rail Consortium and Asciano;
- (d) such other conditions made or required by the Court under subsection 411(6) of the Corporations Act in relation to this Scheme and agreed to by the Rail Consortium and Asciano having been satisfied or waived; and
- (e) the orders of the Court made under paragraph 411(4)(b) (and, if applicable, subsection 411(6)) of the Corporations Act approving this Scheme coming into effect, pursuant to subsection 411(10) of the Corporations Act, on or before the End Date.

#### **3.2 Certificates**

- (a) Each of Asciano, the Rail Consortium, Ports Consortium and BAPS Consortium will provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived as at 8.00am on the Second Court Date.
- (b) The certificates referred to in clause 3.2(a) constitute conclusive evidence that such conditions precedent were satisfied, waived or taken to be waived.

#### **3.3 End Date**

This Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or

- (b) the Implementation Deed, any Sale Agreement or the Deed Poll is terminated in accordance with its terms, unless Asciano, the Ports Consortium, Rail Consortium and BAPS Consortium otherwise agree in writing.

## **4 Implementation of this Scheme**

### **4.1 Lodgement of Court orders with ASIC**

If the conditions precedent set out in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(e) of this Scheme) are satisfied, Asciano must lodge with ASIC, in accordance with subsection 411(10) of the Corporations Act, an office copy of the Court order approving this Scheme as soon as possible after the Court approves this Scheme and in any event by 5.00pm on the first Business Day after the day on which the Court approves this Scheme.

### **4.2 Transfer of Scheme Shares**

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5.2(a) and BidCo having provided Asciano with written confirmation thereof, the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, must be transferred to BidCo, without the need for any further act by any Scheme Shareholder (other than acts performed by Asciano as attorney and agent for Scheme Shareholders under clause 8.5), by:
  - (i) Asciano delivering to BidCo a duly completed Scheme Transfer, executed on behalf of the Scheme Shareholders by Asciano, for registration; and
  - (ii) BidCo duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to Asciano for registration; and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(a)(ii), but subject to the stamping of the Scheme Transfer (if required), Asciano must enter, or procure the entry of, the name of BidCo in the Asciano Share Register in respect of all the Scheme Shares transferred to BidCo in accordance with this Scheme.

## **5 Scheme Consideration**

### **5.1 Entitlement to Scheme Consideration**

Subject to the terms of this Scheme, each Scheme Shareholder will be entitled to the Scheme Consideration.

### **5.2 Provision of Scheme Consideration**

- (a) BidCo must, by no later than the Business Day before the Implementation Date, deposit in cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to Scheme Shareholders in an Australian dollar denominated trust account operated by Asciano as trustee for the Scheme Shareholders (provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to BidCo's account).
- (b) On the Implementation Date, subject to funds having been deposited in accordance with clause 5.2(a), Asciano must pay or procure the payment, from the trust account referred to in clause 5.2(a), to each Scheme Shareholder the Scheme Consideration as that Scheme Shareholder is entitled under this clause 5.

- (c) The obligations of Asciano under clause 5.2(b) will be satisfied by Asciano (in its absolute discretion):
  - (i) where a Scheme Shareholder has, before the Scheme Record Date, made a valid election in accordance with the requirements of the Asciano Registry to receive dividend payments from Asciano by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
  - (ii) otherwise, whether or not the Scheme Shareholder has made an election referred to in clause 5.2(c)(i), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.3).
- (d) To the extent that, following satisfaction of Asciano's obligations under clauses 5.2(b) and 5.4, there is a surplus in the amount held by Asciano as trustee for the Scheme Shareholders in the trust account referred to in that clause, that surplus shall be paid by Asciano to BidCo.
- (e) If, following satisfaction of BidCo's obligations under clause 5.2(a) but prior to the occurrence of all of the events described in clause 4.2, this Scheme lapses under clause 3.3(b):
  - (i) Asciano must immediately repay (or cause to be repaid) to or at the direction of BidCo the funds that were deposited in the trust account plus any interest on the amounts deposited (less bank fees and other charges);
  - (ii) the obligation to transfer Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, to BidCo under 4.2(a) will immediately cease;
  - (iii) BidCo must return the Scheme Transfer, if provided pursuant to clause 4.2(a)(i); and
  - (iv) Asciano is no longer obliged to enter, or procure the entry of, the name of BidCo in the Asciano Share Register in accordance with clause 4.2(b).

### 5.3 Joint holders

In the case of Scheme Shares held in joint names:

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

### 5.4 Cancellation and re-issue of cheques

- (a) Asciano may cancel a cheque issued under this clause 5 if the cheque:
  - (i) is returned to Asciano; or

- (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Asciano (or the Asciano Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), Asciano must reissue a cheque that was previously cancelled under clause 5.4(a).

## 5.5 Unclaimed monies

- (a) The *Unclaimed Money Act 2008* (Vic) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of the *Unclaimed Money Act 2008* (Vic)).
- (b) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of BidCo.

## 5.6 Orders of a court or Government Agency

If written notice is given to Asciano (or the Asciano Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder by Asciano in accordance with this clause 5, then Asciano shall be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
- (b) prevents Asciano from making a payment to any particular Scheme Shareholder in accordance with clauses 5.2(b) and 5.2(c), or the payment is otherwise prohibited by applicable law, Asciano shall be entitled to retain an amount, in Australian dollars, equal to the amount of the relevant payment until such time as payment in accordance with this clause 5 is permitted by that order or direction or otherwise by law.

## 6 Dealings in Asciano Shares

### 6.1 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in Asciano Shares or other alterations to the Asciano Share Register will only be recognised by Asciano if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Asciano Share Register as the holder of the relevant Asciano Shares on or before the Scheme Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received on or before the Scheme Record Date at the place where the Asciano Share Register is kept,

and Asciano must not accept for registration, nor recognise for any purpose (except a transfer to BidCo pursuant to this Scheme and any subsequent transfer by BidCo or its successors in title), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

### 6.2 Register

- (a) If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them on or after the Scheme Record Date otherwise than



pursuant to this Scheme, and any attempt to do so will have no effect and Asciano shall be entitled to disregard any such disposal, purported disposal or agreement.

- (b) For the purpose of determining entitlements to the Scheme Consideration, Asciano must maintain the Asciano Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Asciano Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (c) All statements of holding for Asciano Shares (other than statements of holding in favour of BidCo or any Excluded Shareholders) will cease to have effect after the Scheme Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Asciano Share Register (other than entries on the Asciano Share Register in respect of BidCo or any Excluded Shareholder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Asciano Shares relating to that entry.
- (d) As soon as possible on or after the Scheme Record Date, and in any event within one Business Day after the Scheme Record Date, Asciano will ensure that details of the names, Registered Addresses and holdings of Asciano Shares for each Scheme Shareholder as shown in the Asciano Share Register are available to BidCo in the form BidCo reasonably requires.

## **7 Quotation of Asciano Shares**

- (a) Asciano must apply to ASX to suspend trading on the ASX in Asciano Shares with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by BidCo, Asciano must apply:
  - (i) for termination of the official quotation of Asciano Shares on the ASX; and
  - (ii) to have itself removed from the official list of the ASX.

## **8 General Scheme provisions**

### **8.1 Consent to amendments to this Scheme**

If the Court proposes to approve this Scheme subject to any alterations or conditions:

- (a) Asciano may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which the Rail Consortium has consented; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which Asciano has consented to.

### **8.2 Scheme Shareholders' agreements and warranties**

- (a) Each Scheme Shareholder irrevocably:
  - (i) agrees to the transfer of their Asciano Shares together with all rights and entitlements attaching to those Asciano Shares in accordance with this Scheme;
  - (ii) agrees to the variation, cancellation or modification of the rights attached to their Asciano Shares constituted by or resulting from this Scheme;
  - (iii) acknowledges that this Scheme binds Asciano and all Scheme Shareholders (including those who do not attend the Scheme Meeting and those who do not vote, or vote against this Scheme, at the Scheme Meeting); and

- (iv) consents to Asciano and BidCo doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to this Scheme and the transactions contemplated by it.
- (b) Each Scheme Shareholder is taken to have warranted to Asciano and BidCo on the Implementation Date, and appointed and authorised Asciano as its attorney and agent to warrant to BidCo on the Implementation Date, that all their Asciano Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme will, at the date of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Asciano Shares to BidCo together with any rights and entitlements attaching to those shares. Asciano undertakes that it will provide such warranty to BidCo as agent and attorney of each Scheme Shareholder.

### 8.3 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to BidCo will, at the time of transfer of them to BidCo, vest in BidCo free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise and free from any restrictions on transfer of any kind.
- (b) Immediately upon the provision of the Scheme Consideration in the manner contemplated by clause 5.2(a), BidCo will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by Asciano of BidCo in the Asciano Share Register as the holder of the Scheme Shares.

### 8.4 Appointment of sole proxy

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 5.2, and until Asciano registers BidCo as the holder of all Scheme Shares in the Asciano Share Register, each Scheme Shareholder:

- (a) is deemed to have appointed BidCo as attorney and agent (and directed BidCo in each such capacity) to appoint any director, officer, secretary or agent nominated by BidCo as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution or document;
- (b) must not attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.4(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as BidCo reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.4(a), BidCo and any director, officer, secretary or agent nominated by BidCo under clause 8.4(a) may act in the best interests of BidCo as the intended registered holder of the Scheme Shares.

## **8.5 Authority given to Asciano**

Each Scheme Shareholder, without the need for any further act, on the Effective Date, irrevocably appoints Asciano and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of:

- (a) enforcing the Deed Poll against the Rail Consortium and BidCo, and Asciano undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against the Rail Consortium and BidCo on behalf of and as agent and attorney for each Scheme Shareholder; and
- (b) executing any document or doing or taking any other act necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including (without limitation) executing the Scheme Transfer,

and Asciano accepts each such appointment. Asciano as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

## **8.6 Binding effect of Scheme**

This Scheme binds Asciano and all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on this Scheme, did not vote at the Scheme Meeting, or voted against this Scheme at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Asciano.

## **9 General**

### **9.1 Stamp duty**

BidCo will, and the Rail Consortium must procure that BidCo will:

- (a) pay all stamp duty and any related fines, penalties and interest in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Scheme and the Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.1(a).

### **9.2 Consent**

Each of the Scheme Shareholders consents to Asciano doing all things necessary or incidental to the implementation of this Scheme, whether on behalf of the Scheme Shareholders, Asciano or otherwise.

### **9.3 Notices**

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Asciano, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at Asciano's registered office or at the office of the Asciano Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by an Asciano Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

### **9.4 Governing law**

- (a) This Scheme is governed by the laws in force in New South Wales.

- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Scheme. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

**9.5 Further action**

Asciano must do all things and execute all documents necessary to give full effect to this Scheme and the transactions contemplated by it.

**9.6 No liability when acting in good faith**

Each Scheme Shareholder agrees that none of Asciano, the Rail Consortium, BidCo nor any director, officer, secretary or employee of any of those entities shall be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

**Schedule 1 - Definitions and interpretation****1 Definitions**

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

<b>Term</b>	<b>Meaning</b>
<b>Asciano Executive Incentive Plan Rules</b>	the employee incentive plan rules of that name issued by Asciano.
<b>Asciano Long Term Incentive Plan Rules</b>	the employee incentive plan rules of that name issued by Asciano.
<b>Asciano Registry</b>	Computershare Investor Services Pty Ltd ACN 078 279 277.
<b>Asciano Rights</b>	either: <ol style="list-style-type: none"> <li>1 a performance right or deferred right granted pursuant to the Asciano Executive Incentive Plan Rules; or</li> <li>2 a performance right granted pursuant to the Asciano Long Term Incentive Plan Rules.</li> </ol>
<b>Asciano Share</b>	a fully paid ordinary share in the capital of Asciano.
<b>Asciano Share Register</b>	the register of members of Asciano maintained by Asciano or the Asciano Registry in accordance with the Corporations Act.
<b>Asciano Shareholder</b>	a person who is registered as the holder of an Asciano Share in the Asciano Share Register.
<b>Associated Shareholder</b>	each Rail Consortium Member, Ports Consortium Member and BAPS Consortium Member and each of their respective Related Bodies Corporate (as each of those terms are defined in the Implementation Deed).
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>ASX</b>	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
<b>BAPS Consortium</b>	the following entities collectively: <ol style="list-style-type: none"> <li>1 Brookfield Infrastructure Partners Limited as general partner of Brookfield Infrastructure Partners L.P. and BIF II GP Bermuda Limited as general partner of BIF II Nitro AIV (Bermuda) LP;</li> <li>2 Buckland Investment Pte Ltd;</li> <li>3 bclMC Nitro Trustee Inc., in its capacity as trustee of the bclMC Nitro Investment Trust; and</li> <li>4 Asciano Investment Company.</li> </ol>
<b>BidCo</b>	[*].
<b>Business Day</b>	for the purposes of clause 4.1 only, any day that is a Business Day within the meaning of the Listing Rules, but otherwise any day which is each of the following: <ol style="list-style-type: none"> <li>1 a Business Day within the meaning of the Listing Rules; and</li> </ol>

	2	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 Sunday, or a day which is a public holiday in the People's Republic of China).
<b>CHES</b>		the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.
<b>Corporations Act</b>		the <i>Corporations Act 2001</i> (Cth).
<b>Court</b>		the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed to in writing by the Rail Consortium and Asciano.
<b>Deed Poll</b>		the deed poll dated [*] 2016 under which the Rail Consortium and BidCo each covenants in favour of the Scheme Shareholders to perform the obligations attributed to the Rail Consortium and BidCo under this Scheme.
<b>Effective</b>		when used in relation to this Scheme, the coming into effect, under subsection 411(10) of the Corporations Act, of the order of the Court made under paragraph 411(4)(b) of the Corporations Act in relation to this Scheme.
<b>Effective Date</b>		the date on which this Scheme becomes Effective.
<b>End Date</b>		15 August 2016, or any later date as the parties to the Implementation Deed agree in writing.
<b>Excluded Shareholder</b>		means: <ol style="list-style-type: none"> <li>1 Global Infrastructure Management Australia Pty Limited as trustee of the GIP Bell Australia Unit Trust in respect of the 77,032,604 Asciano Shares held by it;</li> <li>2 Perpetual Corporate Trust Limited as trustee of the CPPIB Australia Trust in respect of the 51,916,055 Asciano Shares held by it;</li> <li>3 Canada Pension Plan Investment Board in respect of the 1,547,348 Asciano Shares held on its behalf by HSBC Custody Nominees (Australia) Limited;</li> <li>4 Qube Holdings Limited in respect of the 61,301,584 Asciano Shares held by it; and</li> <li>5 Nitro Corporation Pty Limited in respect of the 188,065,605 Asciano Shares held by it.</li> </ol>
<b>Government Agency</b>		any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, including a stock or other securities exchange, or any minister of the Crown in right of the Commonwealth of Australia or any State or Territory, or any other federal, state, territorial, provincial, local or other government, whether foreign or Australian.
<b>Implementation Date</b>		the later of:

	<ol style="list-style-type: none"> <li>1 the fifth Business Day after the Scheme Record Date; and</li> <li>2 the first Business Day after completion under both Sale Agreements has occurred,</li> </ol> <p>or such other date as the parties to the Implementation Deed agree in writing.</p>
<b>Implementation Deed</b>	the scheme implementation deed dated [*] 2016 between Asciano and the members of each of the Rail Consortium, Ports Consortium and BAPS Consortium relating to the implementation of this Scheme.
<b>Listing Rules</b>	the official listing rules of ASX.
<b>Ports Consortium</b>	<p>the following entities collectively:</p> <ol style="list-style-type: none"> <li>1 Brookfield Infrastructure Partners Limited as general partner of Brookfield Infrastructure Partners L.P. and BIF II GP Bermuda Limited as general partner of BIF II Nitro AIV (Bermuda) LP;</li> <li>2 Qube Holdings Limited (ACN 149 723 053);</li> <li>3 Buckland Investment Pte Ltd;</li> <li>4 bcIMC Nitro Trustee Inc., in its capacity as trustee of the bcIMC Nitro Investment Trust; and</li> <li>5 Asciano Investment Company.</li> </ol>
<b>Rail Consortium</b>	<p>the following entities:</p> <ol style="list-style-type: none"> <li>1 Global Infrastructure Management Australia Pty Limited (ACN 132 664 745) in its capacity as trustee of the GIP Bell Australia Unit Trust;</li> <li>2 Beijing Shunrong Investment Corporation;</li> <li>3 Buckland Investment Pte Ltd; and</li> <li>4 bcIMC Nitro Trustee Inc., in its capacity as trustee of the bcIMC Nitro Investment Trust; and</li> <li>5 Canada Pension Plan Investment Board.</li> </ol>
<b>Registered Address</b>	in relation to an Asciano Shareholder, its address shown in the Asciano Share Register as at the Scheme Record Date.
<b>Sale Agreements</b>	<p>means:</p> <ol style="list-style-type: none"> <li>1 the share purchase agreement dated [*] between Patrick Terminals BidCo Pty Ltd (ACN 611 133 861), Brookfield Infrastructure Partners Limited as general partner of Brookfield Infrastructure Partners L.P., Qube Holdings Limited (ACN 149 723 053) and Asciano pursuant to which Asciano agrees to sell, and Patrick Terminals BidCo Pty Ltd (ACN 611 133 861) agrees to purchase, all of the issued shares in Asciano Holdings (Containers) Pty Ltd (ACN 123 684 060), on and subject to the terms and conditions of that agreement; and</li> <li>2 the share purchase agreement dated [*] between BAPS BidCo</li> </ol>

Pty Ltd (ACN 611 189 381), Brookfield Infrastructure Partners Limited as general partner of Brookfield Infrastructure Partners L.P. and Asciano pursuant to which Asciano agrees to sell, and BAPS BidCo Pty Ltd (ACN 611 189 381) agrees to purchase, all of the issued shares in Asciano Holdings (General & Bulk) Pty Ltd (ACN 123 683 885), on and subject to the terms and conditions of that agreement.

<b>Scheme</b>	this scheme of arrangement under Part 5.1 of the Corporations Act between Asciano and the Scheme Shareholders subject to any alterations or conditions as agreed between the Rail Consortium and Asciano in writing or made or required by the Court under subsection 411(6) of the Corporations Act and agreed to by the Rail Consortium and Asciano.
<b>Scheme Consideration</b>	for each Asciano Share held by a Scheme Shareholder as at the Scheme Record Date, an amount equal to A\$9.15 less the amount per Asciano Share of up to A\$0.90 paid by Asciano as a special dividend pursuant to its discretion under clause 4.6 of the Implementation Deed.
<b>Scheme Meeting</b>	the meeting of the Asciano Shareholders (other than Associated Shareholders) ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on this Scheme and includes any meeting convened following any adjournment or postponement of that meeting.
<b>Scheme Record Date</b>	5.00pm on the tenth Business Day after the Effective Date or such other time and date as the parties to the Implementation Deed agree in writing.
<b>Scheme Shareholder</b>	a holder of Asciano Shares recorded in the Asciano Share Register as at the Scheme Record Date (other than an Excluded Shareholder).
<b>Scheme Shares</b>	all Asciano Shares held by the Scheme Shareholders as at the Scheme Record Date.
<b>Scheme Transfer</b>	a duly completed and executed proper instrument of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, in favour of BidCo as transferee, which may be a master transfer of all or part of the Scheme Shares.
<b>Second Court Date</b>	the first day on which an application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving this Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application or appeal is heard.
<b>Subsidiary</b>	<p>in relation to an entity, has the meaning given in Division 6 of Part 1.2 of the Corporations Act but so that:</p> <ol style="list-style-type: none"> <li>1 an entity will also be deemed to be a 'Subsidiary' of an entity if that entity is required by the accounting standards to be consolidated by that entity;</li> <li>2 a trust or fund may be a 'Subsidiary', for the purposes of which any units or other beneficial interests will be deemed to be</li> </ol>



shares; or

- 3 a corporation or trust or fund may be a 'Subsidiary' of a trust or fund if it would have been a Subsidiary if that trust or fund were a corporation.

## 2 Interpretation

In this Scheme:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Scheme;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Scheme have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Scheme;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this Scheme) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to Australian currency;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney, New South Wales;
- (k) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1 of this Schedule 1, has the same meaning when used in this Scheme;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this Scheme will be construed adversely to a party because that party was responsible for the preparation of this Scheme or that provision;
- (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 reference to a body, other than a party to this Scheme (including an institute, association or authority), whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

- (q) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (r) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (s) if an act prescribed under this Scheme to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day; and
- (t) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

### **3 Interpretation of inclusive expressions**

Specifying anything in this Scheme after the words 'include' or 'for example' or similar expressions does not limit what else is included.

### **4 Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

**Attachment 2**

**Deed Poll**

## Deed Poll

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
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F +61 2 9230 5333  
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This Deed Poll is made on

#### Parties

- 1 **Global Infrastructure Management Australia Pty Limited** (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**).
- 2 **Canada Pension Plan Investment Board**, a Canadian Crown corporation of One Queen Street East, Suite 2500, Toronto, Ontario, Canada M5C 2WC (**CPPIB**).
- 3 **Beijing Shunrong Investment Corporation** of 1939, 19/F, No. 1 Chaoyangmen Beidajie, Dongcheng District, Beijing, 100010, China (**Shunrong**).
- 4 **Buckland Investment Pte Ltd** of 168 Robinson Road #37-01 Capital Tower Singapore 068912 (**GIC**).
- 5 **bclMC Nitro Trustee Inc., in its capacity as trustee of the bclMC Nitro Investment Trust** of Suite 300, 2950 Jutland Road, Victoria, British Columbia, V8T 5K2 Canada (**bclMC**).

(GIP, CPPIB, Shunrong, GIC and bclMC collectively being the **Rail Consortium** and each a **Rail Consortium Member**).

- 6 **[\*]** (**BidCo**).

#### In favour of

Each holder of fully paid ordinary shares in Asciano Limited (ACN 123 652 862) (**Asciano**) recorded in the Share Register as at the Scheme Record Date (other than an Excluded Shareholder) (each a **Scheme Shareholder** and together the **Scheme Shareholders**).

#### Recitals

- A Asciano, the Rail Consortium Members and other entities entered into the Implementation Deed.
- B In the Implementation Deed, the Rail Consortium Members agreed to execute this deed poll and to procure that BidCo execute this deed poll.
- C The Rail Consortium and BidCo are executing this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to perform their obligations under the Implementation Deed and the Scheme.

It is agreed as follows.

#### 1 Definitions and interpretation

##### 1.1 Definitions

In this deed poll:

- (a) **Implementation Deed** means the scheme implementation deed dated [\*] 2016 between Asciano, the Rail Consortium Members and others relating to the implementation of the Scheme;
- (b) **Rail Consortium Respective Proportion** has the meaning given in the Implementation Deed;

- (c) **Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Asciano and the Scheme Shareholders, the form of which is attached to this deed poll, subject to any alterations or conditions as agreed between the Rail Consortium and Asciano in writing or made or required by the Court under subsection 411(6) of the Corporations Act and agreed to by the Rail Consortium and Asciano; and
- (d) unless the context requires otherwise, terms defined in the Implementation Deed or the Scheme have the same meaning when used in this deed poll.

## 1.2 Interpretation

Sections 2, 3 and 4 of Schedule 1 of the Scheme apply to the interpretation of this deed poll, except that references to 'this Scheme' are to be read as references to 'this deed poll'.

## 1.3 Nature of deed poll

The Rail Consortium and BidCo acknowledge that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints Asciano and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against the Rail Consortium and BidCo.

## 1.4 Several obligations

Where this deed poll imposes any obligation or liability on the Rail Consortium (including an obligation on the Rail Consortium Members to procure that BidCo undertakes a specified action), that obligation or liability is imposed on the Rail Consortium Members severally in their Rail Consortium Respective Proportions, and no Rail Consortium Member will have any liability in respect of such obligation or liability beyond its Rail Consortium Respective Proportion.

## 2 Conditions to obligations

### 2.1 Conditions

This deed poll and the obligations of the Rail Consortium and BidCo under this deed poll are subject to the Scheme becoming Effective.

### 2.2 Termination

The obligations the Rail Consortium and BidCo under this deed poll to the Scheme Shareholders will automatically terminate and the terms of this deed poll will be of no force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms;
- (b) the Scheme is not Effective on or before the End Date; or
- (c) the Scheme lapses and becomes of no further force or effect under clause 3.3 of the Scheme,

unless the Rail Consortium, BidCo and Asciano otherwise agree in writing.

### 2.3 Consequences of termination

If this deed poll terminates under clause 2.2, in addition and without prejudice to any other rights, powers or remedies available to Scheme Shareholders:

- (a) the Rail Consortium and BidCo are released from their obligations to further perform this deed poll except those obligations contained in clause 8.1 and any other obligations which by their nature survive termination; and

- (b) each Scheme Shareholder retains the rights they have against the Rail Consortium and BidCo in respect of any breach of this deed poll which occurred before it was terminated.

### 3 Scheme obligations

- (a) Subject to clause 2, BidCo undertakes in favour of each Scheme Shareholder to:
  - (i) deposit in cleared funds, by no later than the Business Day before the Implementation Date, an amount equal to the aggregate Scheme Consideration payable to all Scheme Shareholders under the Scheme into an Australian dollar denominated trust account operated by Asciano as trustee for the Scheme Shareholders, except that any interest on the amounts deposited (less bank fees and other charges) will be credited to BidCo's account; and
  - (ii) undertake all other actions attributed to it under the Scheme, subject to and in accordance with the terms of the Scheme.
- (b) Subject to clause 2, the Rail Consortium undertakes in favour of each Scheme Shareholder to:
  - (i) procure the deposit by BidCo of, in cleared funds, by no later than the Business Day before the Implementation Date, an amount equal to the aggregate Scheme Consideration payable to all Scheme Shareholders under the Scheme into an Australian dollar denominated trust account operated by Asciano as trustee for the Scheme Shareholders, except that any interest on the amounts deposited (less bank fees and other charges) will be credited to BidCo's account; and
  - (ii) undertake all other actions attributed to it under the Scheme, subject to and in accordance with the terms of the Scheme.

### 4 Warranties

Each of GIP, CPPIB, Shunrong, GIC, bclMC and BidCo (each a **Warrantor**) represents and warrants in favour of each Scheme Shareholder that each of the following statements are true and correct with respect to the relevant Warrantor (except that where it is noted below that a warranty relates to a particular Warrantor only, then only that Warrantor gives that warranty with respect to itself):

- (a) **validly existing:**
  - (i) with respect to GIP only, the GIP Bell Australia Unit Trust is duly established and validly subsisting;
  - (ii) with respect to CPPIB only, CPPIB is a corporation duly established by statute and validly existing under the laws of the place of its incorporation;
  - (iii) with respect to bclMC only, the bclMC Nitro Investment Trust is duly established and validly subsisting; and
  - (iv) with respect to each other Warrantor, it is a corporation duly incorporated and validly existing under the laws of the place of its incorporation;
- (b) **authority:** the execution and delivery of this deed poll has been properly authorised by all necessary corporate action of the Warrantor;
- (c) **power:**
  - (i) with respect to GIP only, Global Infrastructure Management Australia Pty Limited is empowered by the trust deed of the GIP Bell Australia Unit Trust to enter into



and perform its obligations under this deed poll in its capacity as a trustee of the GIP Bell Australia Unit Trust;

- (ii) with respect to bcIMC only, bcIMC Nitro Trustee Inc., is empowered by the trust deed of the bcIMC Nitro Investment Trust to enter into and perform its obligations under this deed poll, in its capacity as a trustee of the bcIMC Nitro Investment Trust; and
  - (iii) with respect to each other Warrantor, it has the power to enter into and perform its obligations under this deed poll;
- (d) **no default:** this deed poll does not conflict with or result in the breach of or a default under:
- (i) any provision of its constitution or, if applicable, other constituent document (and, with respect to GIP only, of the trust deed of the GIP Bell Australia Unit Trust and, with respect to bcIMC only, of the trust deed of the bcIMC Nitro Investment Trust); and
  - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which the Warrantor (and, with respect to GIP only, the GIP Bell Australia Unit Trust and, with respect to bcIMC only, the bcIMC Nitro Investment Trust) is bound,
- and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed poll;
- (e) **deed binding:**
- (i) with respect to GIP only, as a continuing obligation, this deed poll is a valid and binding obligation of Global Infrastructure Management Australia Pty Limited as trustee of the GIP Bell Australia Unit Trust, enforceable in accordance with its terms;
  - (ii) with respect to bcIMC only, as a continuing obligation, this deed poll is a valid and binding obligation of bcIMC Nitro Trustee, Inc. as trustee of the bcIMC Nitro Investment Trust, enforceable in accordance with its terms; and
  - (iii) with respect to each other Warrantor, as a continuing obligation, this deed poll is a valid and binding obligation of the Warrantor, enforceable in accordance with its terms.

## 5 Continuing obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) the Rail Consortium and BidCo have fully performed their obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.

## 6 Trustee limitation of liability

Notwithstanding any other provision in this deed poll:

- (a) Global Infrastructure Management Australia Pty Limited (ACN 132 664 745) and bcIMC Nitro Trustee Inc. (each a **Trustee**) enter into this deed poll only in their capacity as trustee of the GIP Bell Australia Unit Trust and the bcIMC Nitro Investment Trust respectively (in each case, the **Trust**) and in no other capacity. A liability arising under or in connection with this deed poll 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 poll 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 poll.

- (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 6 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 poll) will be considered fraud, negligence or wilful default of the Trustee for the purpose of clause 6(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 poll 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 purpose of clause 6(c).
- (f) The Trustee is not obliged to do or refrain from doing anything under this deed poll (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in clauses 6(a) to 6(c).

## 7 Notices

### 7.1 Form of Notice

A notice or other communication in respect of this deed poll (**Notice**) must be:

- (a) in writing and in English and signed by or on behalf of the sending party; and
- (b) addressed to the Rail Consortium and BidCo in accordance with the details set out below (or any alternative details nominated by the Rail Consortium or BidCo by Notice).

Party	Address	Addressee	Email
GIP	12 East 49th Street, 38th Floor New York. New York 10017, USA	Julie Ashworth	<a href="mailto:Julie.Ashworth@global-infra.com">Julie.Ashworth@global-infra.com</a>
	Copy to Allens Deutsche Bank Place 126 Phillip St Sydney NSW 2000	Guy Alexander and Tom Story	<a href="mailto:Guy.Alexander@allens.com.au">Guy.Alexander@allens.com.au</a> <a href="mailto:Tom.Story@allens.com.au">Tom.Story@allens.com.au</a>
CPIB	One Queen Street East, Suite 2500, Toronto,	Bruce Hogg and Paul Bernath	<a href="mailto:bhogg@cpiib.com">bhogg@cpiib.com</a> <a href="mailto:pbernath@cpiib.com">pbernath@cpiib.com</a>

Party	Address	Addressee	Email
	Ontario M5C 2W5 Canada		
	Copy to Allens Level 37 101 Collins Street Melbourne VIC 3000	Wendy Rae	<a href="mailto:Wendy.Rae@allens.com.au">Wendy.Rae@allens.com.au</a>
<b>Shunrong</b>	1939, 19/F, No. 1 Chaoyangmen Beidajie, Dongcheng District Beijing, 100010, China	Ms. Wang Yan and Mr. Bao Jianmin	<a href="mailto:wangy@china-inv.cn">wangy@china-inv.cn</a> <a href="mailto:baojm@china-inv.cn">baojm@china-inv.cn</a>
	Copy to Jones Day 88 Phillip St Sydney NSW 2000	Mark Crean and Robert Speed	<a href="mailto:mcrean@jonesday.com">mcrean@jonesday.com</a> <a href="mailto:rspeed@jonesday.com">rspeed@jonesday.com</a>
<b>GIC</b>	168 Robinson Road, #37- 01, Capital Tower, Singapore 068912	Paul Barr and Chin Hau Boon	<a href="mailto:paulbarr@gic.com.sg">paulbarr@gic.com.sg</a> <a href="mailto:boonchinhau@gic.com.sg">boonchinhau@gic.com.sg</a>
	Herbert Smith Freehills Level 34, ANZ Tower 161 Castlereagh Street Sydney NSW 2000	Philippa Stone	<a href="mailto:Philippa.stone@hsf.com">Philippa.stone@hsf.com</a>
<b>bcIMC</b>	300-2950 Jutland Road, Victoria, BC, V8T 5K2	Lincoln Webb	<a href="mailto:privateplacements@bcimc.com">privateplacements@bcimc.com</a>
	Herbert Smith Freehills Level 34, ANZ Tower 161 Castlereagh Street Sydney NSW 2000	Philippa Stone	<a href="mailto:Philippa.stone@hsf.com">Philippa.stone@hsf.com</a>
<b>BidCo</b>	[*]	[*]	[*]

## 7.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (business hours period), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By pre paid post to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date of posting
By email to the nominated email address	The earliest to occur of: <ul style="list-style-type: none"> <li>(i) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;</li> </ul>

- 
- (ii) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
  - (iii) 2 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 2 hour period, an automated message that the email has not been delivered.
- 

### 7.3 Notice must not be given by electronic communication

A Notice must not be given by electronic means of communication (other than email as permitted in clause 7.2).

## 8 General

### 8.1 Stamp duty

BidCo will, and the Rail Consortium will procure that BidCo will:

- (a) pay all stamp duty and any related fines, penalties and interest in respect of the Scheme and this deed poll, the performance of this deed poll and each transaction effected by or made under the Scheme and this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 8.1(a).

### 8.2 Governing law and jurisdiction

- (a) This deed poll is governed by the law in force in New South Wales, Australia.
- (b) The Rail Consortium and BidCo irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed poll. The Rail Consortium and BidCo irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### 8.3 Waiver

- (a) The Rail Consortium and BidCo may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) No Scheme Shareholder may rely on words or conduct of the Rail Consortium or BidCo as a waiver of any right unless the waiver is in writing and signed by the Rail Consortium or BidCo, as appropriate.
- (c) The meanings of the terms used in this clause 8.3 are set out below.

Term	Meaning
<b>conduct</b>	includes a failure or delay in the exercise, or partial exercise, of a right
<b>right</b>	any right arising under or in connection with this deed poll (including a breach of, or default under this deed poll) and includes the right to rely on this clause.
<b>waiver</b>	includes an election between rights and remedies, and conduct which

might otherwise give rise to an estoppel.

#### **8.4 Variation**

A provision of this deed poll or any right created under it may only be varied, altered or otherwise amended if:

- (a) before the First Court Date, the variation is agreed to by Asciano in writing; or
- (b) on or after the First Court Date, the variation is agreed to by Asciano in writing and the Court indicates that the variation would not of itself preclude approval of the Scheme,

in which event the Rail Consortium and BidCo will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation, alteration or amendment.

#### **8.5 Cumulative rights**

The rights, powers and remedies of the Rail Consortium, BidCo and the Scheme Shareholders under this deed poll are cumulative and are in addition to, and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

#### **8.6 Assignment**

- (a) The rights and obligations created by this deed poll are personal to the Rail Consortium, BidCo and each Scheme Shareholder and must not be dealt with at law or in equity without the prior written consent of the Rail Consortium, BidCo or Asciano (as appropriate).
- (b) Any purported dealing in contravention of clause 8.6(a) is invalid.

#### **8.7 Further action**

The Rail Consortium and BidCo must, at their own expense, do all things and execute all documents (on its own behalf or on behalf of each Scheme Shareholder) necessary to give full effect to this deed poll and the transactions contemplated by it.

#### **8.8 Service of process**

Without preventing any other mode of service, any document in a legal action, suit or other proceeding in the courts of New South Wales or courts of appeal from them (including any writ of summons or other originating process or any third or other party notice) may be served on the Rail Consortium by being delivered to or left for the Rail Consortium at the address shown for BidCo at the beginning of this deed poll.

## Execution pages

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 Limited** in its capacity as trustee of the **GIP Bell Australia Unit Trust**:

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Director Signature

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Print Name

---

Director/Secretary Signature

---

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

**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

**Signed Sealed and Delivered** by **Buckland Investment Pte Ltd** in the presence of:

---

Signature of Witness

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Signature of Authorised Signatory

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Name of Witness

---

Name of Authorised Signatory

**Signed Sealed and Delivered** by **bcIMC Nitro Trustee Inc.**, in its capacity as trustee of the **bcIMC Nitro Investment Trust** by its attorneys under power of attorney in the presence of:

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Signature of Witness

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Signature of Attorney

---

Name of Witness

---

Name of Attorney

---

Signature of Witness

---

Signature of Attorney

---

Name of Witness

---

Name of Attorney

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **[BidCo]**:

---

Director Signature

---

Director/Secretary Signature

---

Print Name

---

Print Name

**Attachment – Scheme of arrangement**