

[DATE]

# Call Option Deed

[●]  
[ACN/ABN ●]

[●]  
[ACN/ABN ●]

[●]  
[ACN/ABN ●]

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**THIS DEED** is made on

[insert date]

**BETWEEN:**

- (1) [Grantor] [ACN/ABN ●] (the **Grantor Trustee**) as trustee for [Grantor Trust] [ABN/ACN ●] of [Address] (the **Grantor**);
- (2) [Grantee] [ABN/ACN ●] of [Address] (the **Grantee**); and
- (3) [ABN/ACN ●] of [Address] (the **Issuer Trustee**) as trustee for [ABN/ACN ●] of [Address] (the **Issuer**).

**RECITALS:**

The Grantor has agreed to grant the Grantee the Option on the terms and conditions set out in this deed.

**THE PARTIES AGREE AS FOLLOWS:**

**1. Definitions and interpretation**

**1.1 Definitions**

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

**Business Day** means a day on which banks are open for general banking business in [insert], Australia (not being a Saturday, Sunday or public holiday).

**Completion** means completion of the transfer of the Units from the Grantor to the Grantee following exercise of the Option in accordance with the terms and conditions of this deed.

**Completion Date** has the meaning given in clause 2.4(a)(i).

**Condition Precedent** means each condition set out in Schedule 3 and Conditions Precedent means all or any of them.

**Duty** means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax.

**Encumbrance** means a right, interest, power or arrangement in relation to any property which provides security for, or protects against default by a person in, the payment or satisfaction of a debt, obligation or liability and includes:

- (a) a mortgage, charge, bill of sale, pledge, deposit, lien, encumbrance, hypothecation or other including a “security interest” as defined in section 12(1) of the PPSA;
- (b) any other arrangement having the effect of conferring security; and
- (c) any agreement or undertaking to grant any such right, interest, power or arrangement.

**Exercise Notice** has the meaning given to it in clause 2.3(a).

**Exercise Period** means the period commencing on [insert date] and ending on [insert date].

**Exercise Price** means A\$[insert][*Note: Insert the price at which the Grantee may acquire the Units upon exercise of the Option.*].

**GST** means the goods and services tax levied under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Government Agency** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

**Immediately Available Funds** means cash, bank cheque or telegraphic or other electronic means of transfer of cleared funds into a bank account nominated in advance by the payee.

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

**Preference Units** means preference units issued by the Project Holding Trust to the Issuer under, and in accordance with, the trust deed of the Project Holding Trust.

**Related Body Corporate** has the meaning given in section 50 of the *Corporations Act 2001* (Cth).

**Security Interest** means security interest as defined in the PPSA.

**Surviving Clauses** means clauses 6, 7, 8 and 9.

**Tax** means any tax, levy, charge, impost, fee, deduction, goods and services tax, compulsory loan or withholding, that is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above but excludes Duty.

**Tax Invoice** includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

**Unitholders Agreement** means the unitholders agreement relating to the Project Holding Trust entered into at or around the date of this deed.

**Units** means 100% of units on issue in the capital of the Issuer.

**Project Group** means:

- (a) [insert relevant entities]; and
- (b) to the extent that the reference in (a) above relates to a trustee for a trust referred to in that paragraph, the relevant trustee in its capacity as trustee of the relevant trust and in its personal capacity,

and **Project Group Entity** means any one of them.

**Project Holding Trust** means [insert];

**Project** means [insert relevant project description].

## 1.2 Interpretation

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) An expression importing 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 and a reference to this deed includes any schedule, attachment and exhibit.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a party to a document includes that party's successors and permitted assignees.
- (j) 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.
- (k) 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.
- (l) 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.
- (m) A reference to a body, other than a party to this deed (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.
- (n) A reference to anything (including, but not limited to, any right) includes a part of that thing but nothing in this clause (n) implies that performance of part of an obligation constitutes performance of the obligation.
- (o) 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.
- (p) 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.
- (q) A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- (r) A reference to \$ is to Australian currency unless denominated otherwise.

- (s) A reference to time is a reference to Sydney time.
- (t) 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 preceding Business Day.
- (u) Specifying anything in this deed after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included.

## 2. **Option**

### 2.1 **Grant**

In consideration for the Grantee paying the Grantor \$A[insert] [*Note: This amount is intended to be nominal*] (receipt of which is hereby acknowledged), the Grantor hereby grants the Grantee, and the Grantee hereby acquires from the Grantor, a call option which gives the Grantee an exclusive right, but not an obligation, to acquire all of the Units free from Encumbrances at the Exercise Price and on the terms and conditions of this deed (the **Option**).

### 2.2 **Conditions Precedent**

- (a) Completion is conditional upon each of the Conditions Precedent being satisfied or waived by the parties:
- (b) The Conditions Precedent are for the benefit of the Grantor and the Grantee, and may only be waived by noticed signed by each of them in writing.
- (c) Each party must:
  - (i) use reasonable endeavours to satisfy the Conditions Precedent as soon as possible following the date of this deed and, in any event, before the Expiry Date;
  - (ii) co-operate with each other and comply with all reasonable requests by the other for the purposes of procuring the satisfaction of any Condition Precedent;
  - (iii) not take any action which will hinder or prevent the satisfaction of any Condition Precedent;
  - (iv) keep each other reasonably informed as to the status of each Condition Precedent; and
  - (v) notify the other party as soon as reasonably practicable after it becomes aware that:
    - (A) a Condition Precedent has been satisfied (together with reasonable evidence demonstrating satisfaction of that condition); or
    - (B) a Condition Precedent has become incapable of satisfaction.

### 2.3 **Exercise**

- (a) At any time within the Exercise Period, the Option may be exercised by the Grantee delivering to the Grantor a notice in the form set out in Schedule 2 (*Exercise Notice*) duly executed by the Grantee specifying the Option is being exercised (the **Exercise Notice**).
- (b) Once given, an Exercise Notice may only be revoked or withdrawn with the prior written consent of the Grantor.

### 2.4 **Completion of Option**

- (a) Following issue of an Exercise Notice, Completion will take place:

- (i) on the date that is no later than [5] Business Days after the date on which the last Condition Precedent is satisfied (or such other date as the Grantor and Grantee may agree in writing) (**Completion Date**); and
  - (ii) electronically (or at such other place as may be agreed by the Grantor and Grantee in writing).
- (b) On the Completion Date:
- (i) the Grantor must sell, and the Grantee must buy the Units for the Exercise Price on the terms set out in this deed;
  - (ii) the Grantee must:
    - (A) pay the Grantor in Immediately Available Funds an amount equal to the Exercise Price;
    - (B) deliver to the Grantor a unit transfer form in respect of the Units duly executed by it; and
    - (C) (if certificated) deliver to the Grantor a copy of the original unit certificate in respect of the Units;
  - (iii) the Grantor must deliver to the Grantee:
    - (A) evidence reasonably satisfactory to the Grantee that the Units and the Preference Units are free from all Encumbrances;
    - (B) a unit transfer form in respect of the Units duly executed by it;
    - (C) a copy of the unit certificate in the name of the Grantor in respect of the Units, or a declaration to the effect that such certificate has been lost or destroyed (in a form reasonably satisfactory to the Grantee); and
    - (D) written confirmation that all registers, statutory records, minute books and other books and records relating to the Units, the Issuer or the assets of the Issuer is in the possession of the Issuer (and will be made available to the Grantee on request), including the unit certificates in respect of the Preference Units held by the Issuer; and
  - (iv) the Issuer must, and the Grantor must procure that the Issuer:
    - (A) resolves to (whether by way of meeting or circular resolution):
      - (aa) accept the transfer of the Units from the Grantor to the Grantee (as evidenced by the unit transfer form duly executed by the Grantor and Grantee);
      - (bb) cancel any unit certificate on issue in the name of the Grantor;
      - (cc) issue to the Grantee a new unit certificate for the Units; and
      - (dd) update the register of unitholders to reflect the transfer of Units and record the Grantee as the registered holder of the Units; and
    - (B) deliver to the Grantee:
      - (aa) a copy of the resolutions contemplated by clause 2.4(b)(iv)(A);

(bb) a copy of the new unit certificate in respect of the Units to the Grantee; and

(cc) a copy of the updated register of unitholders.

## 2.5 **Obligations interdependent**

- (a) The obligations of the parties under this deed in respect of Completion (including under clause 2.4(b)) are interdependent and must take place simultaneously. If one such action does not take place, or is deemed under this deed to not have taken place, then without prejudice to any rights available to a party as a consequence:
- (i) there is no obligation on any party to undertake or perform any other actions under clause 2.4(b);
  - (ii) to the extent such actions have already been undertaken, the parties must immediately do everything reasonably required to reverse those actions; and
  - (iii) each party must immediately return to each other party all documents delivered under clause 2.4(b) (or delivered by a party in anticipation of Completion) and must immediately repay to the other parties all payments received by that party under clause 2.4(b), without prejudice to any rights any party may have in respect of that failure.
- (b) Performance of the obligations of each party in respect of Completion of this deed are treated as taking place simultaneously and no delivery or payment will be taken to have been made until all deliveries and payments have been made. Once all such obligations have been performed, they must be treated as having been performed simultaneously on the date on which the final obligation is performed.
- (c) Completion is taken to have occurred when each party has performed all of its obligations under clause 2.4(b).

## 3. **Obligations prior to Completion or the Expiry Date**

### 3.1 **Access and Information Rights**

Until the earlier of Completion and the Expiry Date, the Grantor must (and must procure that the Issuer and the Project Group) provide the Grantee, its directors, officers and other advisors or persons authorised by the Grantee:

- (a) all or any information and assistance reasonably requested by the Grantee in relation to the Issuer, the Project Group or the Project for the purpose of determining whether or not to exercise the Option, including, without limitation:
- (i) periodic reporting including project reports and board materials provided to the unitholders of the Project Holding Trust; and
  - (ii) reasonable access to management within the Project Group for question and answer sessions in relation to the Project; and
- (b) as soon as reasonably practicable (and, in any event, within [10] Business Days), details of any Reserved Matter (as defined in the Unitholders Agreement) having been undertaken, or agreed to be undertaken, by the Project Group.

### 3.2 **Rights and restrictions**

- (a) The Option does not confer any rights to distributions from the Issuer.

- (b) The Option will not be transferable by the Grantee to any party without the prior written consent of the Grantor, such consent not to be unreasonably withheld or delayed.
- (c) Until the earlier of Completion and the Expiry Date, the Grantor must:
  - (i) ensure that the Issuer manages and conducts its business and affairs in accordance with all applicable laws and regulations;
  - (ii) not do anything which would restrict or limit its ability to perform its obligations under this deed; and
  - (iii) ensure the Issuer does not, and must not permit the Issuer to:
    - (A) issue, allot or grant any securities or rights to receive securities, including convertible securities;
    - (B) buy back, redeem or otherwise reduce or return any of its unit capital or other securities, or make any offer to do so;
    - (C) take any action which has the effect of changing the nature or terms of, or rights attached to any Units, or to restrict the Issuer ability to transfer the Units on the exercise of Option;
    - (D) take any action which has the effect of changing the nature or terms of, or rights attached to the Preference Units;
    - (E) directly or indirectly dispose of any Preference Units in the Project Holding Trust, or of its indirect interest in the Project ;
    - (F) create or grant any Encumbrance over, or in respect of any of the Preference Units, or any other asset of the Project Holding Trust;
    - (G) directly or indirectly dispose of any assets, interests or rights held by the Issuer as at the date of this deed, including the Preference Units held by the Project Holding Trust and its interest in the Project ;
    - (H) directly acquire any securities in any other entity or any other assets, interests or rights (other than the Preference Units and any assets held by the Issuer as at the date of this deed);
    - (I) enter into, materially amend or vary or terminate any material contract or arrangement;
    - (J) take any steps to wind-up or dissolve the Issuer or the Project Holding Trust;
    - (K) incur any liabilities as at the date of this deed; or
    - (L) amend, vary or terminate the Unitholders Agreement,

in each case, without the prior written consent of the Grantee.

#### **4. Term and termination**

##### **4.1 General**

This deed will continue until the date on which this deed is terminated in accordance with this clause 4.

#### 4.2 **Termination for Adverse Event**

- (a) The Grantor may notify the Grantee if, in its reasonable opinion, an Adverse Event has occurred in respect of the Grantee (**Adverse Event Notice**), where such notice must set out:
- (i) the nature, facts and circumstances giving rise to the Adverse Event; and
  - (ii) (if known) the steps the Grantor considers reasonably required or necessary to remedy or rectify the Adverse Event.
- (b) If the Adverse Event notified in the Adverse Event Notice is not remedied or rectified to the reasonable satisfaction of the Grantor within [20] Business Days of the date of receipt the Adverse Event Notice, the Grantor may terminate this deed in its entirety with [10] Business Days prior written notice to the Grantee due to an Adverse Event.
- (c) For the purposes of this clause 4.2, **Adverse Event** means where the Grantee (or any of its directors, officers, employees, consultants, or professional advisors):
- (i) has committed fraud;
  - (ii) has committed a criminal offence which in the reasonable opinion of the Grantor would (or would reasonably be expected to) detrimentally affect the Issuer, the Project Group or the Project; or
  - (iii) has been involved in illegal, immoral or unethical conduct which the Grantor reasonably determines would (or would reasonably be expected to) detrimentally affect the value of the Project.

#### 4.3 **Termination for failure to exercise**

If an Exercise Notice has not been given during the Exercise Period, this deed shall terminate automatically on and from 5:00pm on the Expiry Date.

#### 4.4 **Termination with notice**

The Grantor may terminate this deed in its entirety with [10] Business Days prior written notice to the Grantee, provided that the Grantor reimburses the Grantee for all of the costs and expenses validly incurred by the Grantee up to the date of termination, subject to a cap of \$[insert].

#### 4.5 **Survival**

Termination or expiry of this deed will not affect any rights or obligations which may have accrued prior to the termination or expiry. Each party's further rights and obligations will cease immediately on expiry or termination except that the Surviving Clauses will survive expiry or termination of this deed and will continue in full force and effect.

### 5. **Warranties**

#### 5.1 **Grantor warranties**

The Grantor represents and warrants to the Grantee that each of the following warranties are true and correct and are not misleading:

- (a) (**Registration**) it is a corporation registered (or taken to be registered) and validly existing under the Corporations Act.
- (b) (**Incorporation**) it is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation.
- (c) (**Power and capacity**) it has full power and capacity to enter into and perform its obligations under this deed.

- (d) **(Corporate Authorisations)** all necessary authorisations for the execution, delivery and performance by the Grantor of this deed in accordance with its terms have been obtained.
- (e) **(No legal impediment)** the execution, delivery and performance of this deed:
  - (i) complies with its constitution; and
  - (ii) does not constitute a breach of any law or obligation, or cause or result in a default under any agreement, or Encumbrance, by which it is bound and which would prevent it from entering into and performing its obligations under this deed.
- (f) **(Solvency):**
  - (i) it has not gone, or is proposed to go, into liquidation;
  - (ii) it has not passed a winding up resolution or commenced steps for winding up or dissolution;
  - (iii) it has not received a deregistration notice under section 601AB of the Corporations Act or any communication from ASIC that might lead to such a notice or applied for deregistration under section 601AA of the Corporations Act;
  - (iv) it has not been presented or threatened with a petition or other process for winding up or dissolution and, so far as the Grantor is aware, there are no circumstances justifying such a petition or other process;
  - (v) no receiver, receiver and manager, judicial manager, liquidator, administrator, or like official has been appointed, or is threatened or expected to be appointed, over the whole or a substantial part of the undertaking or property of the Grantor, and, so far as the Grantor is aware, there are no circumstances justifying such an appointment;
  - (vi) it has not entered into, or taken steps or proposed to enter into, any arrangement, compromise or composition with or assignment of the benefit of its creditors or class of them;
  - (vii) no writ of execution has been issued against the Grantor or its property and there are no circumstances justifying such a writ; and
  - (viii) it is able to pay its debts as and when they fall due and it is not taken under applicable law to be unable to pay its debts or has stopped or threatened to stop or suspend, payment of all or a class of its debts.

## 5.2 **Grantor warranties in relation to Units**

Without limiting the warranties given in clause 5.1, the Grantor warrants to the Grantee as at the time immediately prior to Completion that each of the warranties in Schedule 4 are true and correct and are not misleading subject to, and qualified by:

- (a) the Grantee's actual knowledge or awareness as at the date on which an Exercise Notice is given;
- (b) any matters fairly disclosed by the Grantor to the Grantee or its representatives in writing prior to the date on which an Exercise Notice is given; and
- (c) any matters relating to the satisfaction of the Conditions Precedent that the Grantee is actually aware of, or fairly disclosed by the Grantor to the Grantee or its representatives in writing.

### 5.3 **Grantee warranties**

The Grantee warrants to the Grantor that each of the following warranties are true and correct and are not misleading:

- (a) **(Power and capacity)** it has full power and capacity to enter into and perform its obligations under this deed.
- (b) **(Corporate Authorisations)** all necessary authorisations for the execution, delivery and performance by the Grantee of this deed in accordance with its terms have been obtained.
- (c) **(Constituent documents)** it has not, and will not (without the consent of the Grantor) alter its constitution (other than to make administrative amendments or amendments to reflect ongoing community engagement, in each case which do not affect the purpose, objectives or overarching intent of the Grantee).
- (d) **(No legal impediment)** the execution, delivery and performance of this deed:
  - (i) complies with its constitution or other constituent documents; and
  - (ii) does not constitute a breach of any law or obligation, or cause or result in a default under any agreement, or Encumbrance, by which it is bound and which would prevent it from entering into and performing its obligations under this deed.

### 5.4 **Nature of warranties**

- (a) Except as expressly provided, the warranties given in this clause 5 are given on the date of this deed and deemed to be repeated immediately before the transfer of the Units from the Grantor to the Grantee.
- (b) Each warranty given in clause 5.1, 5.2 and clause 5.2 is to be construed independently and is not limited by reference to any other warranty.

### 5.5 **Reliance**

Each party acknowledges that the other party has entered into this deed and will complete this deed in reliance on the warranties made by the other party in this clause 5.

## 6. **Duties, costs and expenses**

### 6.1 **Stamp duty**

- (a) The Grantor must pay the Duty in respect of the execution, delivery and performance of:
  - (i) this deed; and
  - (ii) any agreement or document entered into or signed under this deed.
- (b) The Grantor must pay any fine, penalty or other cost in respect of a failure to pay any Duty except to the extent that the fine, penalty or other cost is caused by an act or default on the part of the Grantee.
- (c) The Grantor indemnifies the Grantee against any amount payable under clause 6.1(a) or clause 6.1(b) or both.

### 6.2 **Costs and expenses**

The Grantor must pay its and the Grantee's costs and expenses in relation to the negotiation, preparation, execution and delivery of this deed.

## 7. Confidentiality and announcements

- (a) Each party (**recipient**) must keep secret and confidential, and must not divulge or disclose any information relating to another party or its business (which is disclosed to the recipient by the other party, its representatives or advisers), this deed, the transactions contemplated by it, or the terms of the Option other than to the extent that:
- (i) the information is in the public domain as at the date of this deed (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on the recipient);
  - (ii) the recipient is required to disclose the information by applicable law or the rules of any recognised stock exchange on which its shares or the shares of any of its Related Bodies Corporate are listed, provided that the recipient has to the extent possible having regard to the required timing of the disclosure consulted with the provider of the information as to the form and content of the disclosure;
  - (iii) the disclosure is made by the recipient to its financiers or lawyers, accountants, investment bankers, consultants or other professional advisers to the extent necessary to enable the recipient to properly perform its obligations under this deed or to conduct their business generally, in which case the recipient must ensure that such persons keep the information secret and confidential and do not divulge or disclose the information to any other person;
  - (iv) the disclosure is required by law in Australia or elsewhere (other than under section 275 of the PPSA to the extent that disclosure is not required under that section if it would breach a duty of confidence);
  - (v) the disclosure is required for use in legal proceedings regarding this deed or the Option; or
  - (vi) the party to whom the information relates has consented in writing before the disclosure.
- (b) Nothing in this deed is to be construed as constituting the consent of a party, with respect to a Security Interest created by this deed, to the disclosure of the terms of this deed for the purpose of section 275(7) of the PPSA. No party who is the grantor of a Security Interest under this deed will, after the date of this deed, consent to the disclosure of the terms of this deed to an interested person for the purpose of section 275 of the PPSA.
- (c) To the extent not prohibited by the PPSA, each party that is the grantor of a Security Interest under this deed waives its right to receive any notice otherwise required to be given by a secured party under section 157 (verification statements) or any other provision of the PPSA.
- (d) Each recipient must ensure that its directors, officers, employees, agents, representatives, financiers, advisers and Related Bodies Corporate comply in all respects with the recipient's obligations under this clause 6.

## 8. Notices

### 8.1 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 in accordance with the details nominated in Schedule 1 (or any alternative details nominated to the sending party by Notice).

## 8.2 **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.

| <b>Method of giving Notice</b>              | <b>When Notice is regarded as given and received</b>  |
|---|---|
| By hand to the nominated address            | When delivered to the nominated address   |
| By registered 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     | When the email (including any attachment) comes to the attention of the recipient party or a person acting on its behalf. |

## 8.3 **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 8.2.

## 9. **General**

### 9.1 **Governing law and jurisdiction**

- (a) This deed is governed by the law in force in [State, Australia].
- (b) Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in [State, Australia] 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.

### 9.2 **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 9.2(a) does not apply where enforcement of the provision of this deed in accordance with clause 9.2(a) would materially affect the nature or effect of the parties' obligations under this deed.

### 9.3 **Waiver**

- (a) 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.
- (b) In this clause 9.3:
  - (i) conduct includes delay in the exercise of a right;
  - (ii) right means any right arising under or in connection with this deed and includes the right to rely on this clause; and

- (iii) waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

**9.4 Variation**

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

**9.5 Assignment of rights**

The Grantor must not assign its rights or obligations arising out of or under this deed without the prior written consent of the Grantee.

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

Subject to clause 6, 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 and use reasonable endeavours to cause relevant third parties to do the same.

**9.7 Entire agreement**

This deed states all the express terms of the agreement between the parties in respect of their subject matter. They supersede all prior discussions, negotiations, understandings, arrangements and agreements, express or implied in respect of its subject matter.

**9.8 No reliance**

Neither party has relied on any statement by the other party not expressly included in this deed.

**9.9 Counterparts**

- (a) This deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this deed by signing any counterpart.
- (d) A party may sign this deed electronically, and bind itself accordingly. In addition, the intention is to print it out after all parties that are signing electronically have done so, so that any such print-out will also be an executed original counterpart of this deed. Each signatory confirms that their signature appearing in this deed, including any such print-out (irrespective of which party printed it), is their personal signature authenticating it.

**9.10 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.

**9.11 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.

**9.12 No merger**

The warranties given under clause 5, undertakings and indemnities in this deed will not merge on Completion.

**9.13 GST**

- (a) All amounts stated in this deed are exclusive of GST unless there is express wording to the contrary.
- (b) If GST is or will be imposed on a supply made under or in connection with this deed by a party, that party may, to the extent that the consideration otherwise provided for that supply is not stated to include an amount in respect of GST on the supply:
  - (i) increase the consideration otherwise provided for that supply by the amount of that GST; or
  - (ii) otherwise recover from the recipient of the supply the amount of that GST.
- (c) The relevant recipient of a supply made under or in connection with this deed is not obliged to pay any GST amount pursuant to clause 9.13(b) until the supplier provides a Tax Invoice or adjustment note (as the case may be) to the recipient setting out the GST inclusive consideration for that supply.

# Schedule 1

## Notice Details

**Grantor** [insert]

Address [insert]

Attention [insert]

Email [insert]

**Grantee** [insert]

Address [insert]

Attention [insert]

Email [insert]

Copy to [insert]

Email [insert]

**Issuer** [insert]

Address [insert]

Attention [insert]

Email [insert]

## Schedule 2

### Exercise Notice

To: the Grantor

Reference is made to the Call Option Deed dated [insert] between [Grantor] as trustee for [Grantor Trust] (Grantor), [Grantee] (Grantee) and Issuer (Call Option Deed).

By this notice the Grantee hereby exercises the Option conferred by the Call Option Deed and requires the Grantor to sell all of the Units to the Grantee and otherwise in accordance with the Call Option Deed.

This Call Exercise Notice is irrevocable, except in accordance with the Call Option Deed.

In this Exercise Notice, words defined in the Call Option Deed have the same meanings.

DATED [date]

EXECUTED by [Grantee]

[insert execution block]

## Schedule 3

### Conditions Precedent

1. The Grantee must pay, or procure the payment of [insert the amount equal to (a) the relevant percentage that the preference units represent of the aggregate amount of units in the Project Holding Trust, multiplied by (b) the aggregate equity support amount] immediately prior to, or at the same time as Completion.
2. Discharge of any Encumbrance over the Units, or the Issuer (or any assets of the Issuer).
3. [Insert any such CP's as required]

# Schedule 4

## Grantor Warranties

### 1 The Issuer

#### 1.1 Incorporation and solvency

The Issuer:

- (a) has a single class of units on issue;
- (b) was duly and validly constituted, in accordance with the laws then in force in the place of its establishment at the time of its settlement;
- (c) is valid and subsisting in accordance with all applicable laws;
- (d) in respect of each of the Issuer and the Issuer Trustee:
  - (i) it has not gone, or is proposed to go, into liquidation;
  - (ii) it has not passed a winding up resolution or commenced steps for winding up or dissolution;
  - (iii) it has not received a deregistration notice under section 601AB of the Corporations Act or any communication from ASIC that might lead to such a notice or applied for deregistration under section 601AA of the Corporations Act;
  - (iv) it has not been presented or threatened with a petition or other process for winding up or dissolution and, so far as the Grantor is aware, there are no circumstances justifying such a petition or other process;
  - (v) no receiver, receiver and manager, judicial manager, liquidator, administrator, or like official has been appointed, or is threatened or expected to be appointed, over the whole or a substantial part of the undertaking or property of the Issuer, and there are no circumstances justifying such an appointment;
  - (vi) it has not entered into, or taken steps or proposed to enter into, any arrangement, compromise or composition with or assignment of the benefit of its creditors or class of them;
  - (vii) no writ of execution has been issued against the Issuer Trustee, the Issuer or its property and there are no circumstances justifying such a writ; and
  - (viii) it is able to pay its debts as and when they fall due and it is not taken under applicable law to be unable to pay its debts or has stopped or threatened to stop or suspend, payment of all or a class of its debts.

#### 1.2 Power

The Issuer Trustee has the power and authority to:

- (a) act as trustee of the Issuer;
- (b) carry on the business of the Issuer as it is presently being conducted.

#### 1.3 Sole trustee

The Issuer Trustee has been validly appointed as and remains sole trustee of the Issuer Trustee and no action has been taken or proposed to remove it as trustee of the Issuer Trustee.

#### **1.4 Trust Deed and Unitholders Agreement**

The trust deed and Unitholders Agreement in the form provided to the Grantee is true, correct and complete and there have not been any amendments to the trust deed or Unitholders Agreement.

#### **1.5 Business of the Issuer**

The only activity of the Issuer is holding Preference Units and any matters incidental to it. The Issuer is not party to any agreements or contracts, that it was not a party to as at the date of this deed.

#### **1.6 Compliance with constituent documents**

The business, administration and affairs of the Issuer have at all times been and continue to be conducted in accordance with the trust deed and written notice has not been given to, or received by the Issuer that it is in default of the trust deed.

#### **1.7 No winding up**

No steps have been taken, and there are no proposals, to wind up the Issuer and there are no circumstances which would entitle any person to present a petition for the winding up or administration of the Issuer.

#### **1.8 Encumbrances**

There are no Encumbrances over the Issuer or any assets of the Issuer.

#### **1.9 No vesting**

Neither the Issuer Trustee nor the Grantor has taken any action or made any determination resolution or appointment which has or may have the effect of vesting, determining or terminating the Issuer in any manner whatsoever.

#### **1.10 Preference Units**

- (a) The Issuer Trustee is the registered holder and legal owner, and the Issuer is the beneficial owner, of all of the Preference Units.
- (b) Other than the Preference Units held by the Issuer, there are no other Preference Units on issue to any other person.
- (c) There are no Encumbrances, no contract of sale, option to purchase, right of first or last refusal, pre-emptive right or other similar right over the Preference Units and no document, arrangement or obligation to create any Encumbrance, no contract of sale, option to purchase, right of first or last refusal, pre-emptive right or other similar right over the Preference Units (other than as set out in the trust deed of the Project Holding Trust and the Unitholders' Agreement).
- (d) No other person holds Preference Units in the Project Holding Trust, or units which rank in priority to the Preference Units.

## **2 The Units**

- (a) The Grantor Trustee is the registered holder and legal owner, and the Grantor is the beneficial owner, of the Units, which comprise all of the units on issue in the Issuer.
- (b) The Grantor and the Grantor Trustee has complete power and right to sell and transfer the Units to the Grantee.
- (c) The Units are validly allotted and issued and fully paid up.

- (d) There is no present or contingent obligation to allot or issue any units in the Issuer or to issue any notes to any person, nor are there any options or other rights entitling any person to call for the transfer, issue or allotment of any units in the Issuer.
- (e) There are no Encumbrances, no contract of sale, option to purchase, right of first or last refusal, pre-emptive right or other similar right over the Units and no document, arrangement or obligation to create any Encumbrance, no contract of sale, option to purchase, right of first or last refusal, pre-emptive right or other similar right over the units.
- (f) There is no restriction on the transfer of the Units to the Grantee on the provisions of this deed.

### 3 Litigation

- (a) No prosecution, litigation, arbitration proceedings, investigation, mediation or other proceeding affecting the Issuer Trustee, the Issuer, the Project Group or the Project:
  - (i) has occurred since the date of establishment of the Issuer Trustee or the Issuer;
  - (ii) is current or has been announced or threatened in writing; or
  - (iii) is pending or threatened,and the Grantor is not aware of any disputes or any matter that would, or would reasonably be likely to, give rise to prosecution, litigation, arbitration proceedings, investigation, mediation or other proceeding affecting the Issuer Trustee, the Issuer, the Project Group or the Project.
- (b) Neither the Issuer Trustee nor any member of the Project Group is in breach of any ruling, judgment or order by any Government Agency or otherwise, binding upon it.
- (c) There is no unsatisfied judgment, arbitral award, order or writ of execution which affects the Issuer Trustee, the Issuer, the Project Group or the Project.

### 4 Compliance with laws

The Issuer Trustee, in its capacity as trustee of the Issuer:

- (a) has conducted the business of the Issuer in all material respects in accordance with applicable laws; and
- (b) has not received a notice of breach of any applicable law which has not been remedied.

### 5 Disclosure Material

The information provided to the Grantee in connection with the transactions contemplated by this deed, the Project Group and the Project:

- (a) is true, complete and accurate in all material respects;
- (b) is not false, inaccurate, misleading or deceptive in any material respect; and
- (c) has been collated and prepared with reasonable care as to its accuracy and completeness, and no material or information has been knowingly and intentionally omitted, the omission of which, if disclosed, might reasonably be expected to affect the decision of the Grantee to exercise the Option and complete the transactions contemplated by this deed, including any liabilities or contingent liabilities relating to the Issuer, the Project Group or the Project.



**EXECUTED** as a deed.

**Grantor**

**EXECUTED** by **[INSERT]** as trustee for **[INSERT]** in accordance with the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Director

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Director

**Grantee**

**EXECUTED** by **[INSERT]** in accordance with the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Director

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Director

**Trust**

**EXECUTED** by **[INSERT]** as trustee for **[INSERT]** in accordance with the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Director

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Director