

# Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition & Consumer Act 2010* (Cth) by APT Pipelines Ltd (ACN 009 666 700) and Australian Pipeline Ltd (ACN 091 344 704) (in its own capacity and in its capacity as trustee of each of the Australian Pipeline Trust and the APT Investment Trust)

July 2012

## **1 Person giving the Undertaking**

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This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by APT Pipelines Ltd (ACN 009 666 700) (**APT Pipelines**) and Australian Pipeline Ltd (ACN 091 344 704) (**APL**) (in its own capacity and in its capacity as trustee of each of the Australian Pipeline Trust (ARSN 091 678 778) and the APT Investment Trust (ARSN 115 585 441)) on behalf of themselves and their subsidiaries (together referred to in this Undertaking as **APA**).

## **2 Background**

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### **2.1 The parties to the Proposed Acquisition**

2.1(a) APT Pipelines is ultimately a wholly-owned subsidiary of APL which together with the Australian Pipeline Trust (ARSN 091 678 778) and APT Investment Trust (ARSN 115 585 441), comprise the "APA Group". The APA Group is an ASX-listed gas transportation business with interests in gas infrastructure across Australia, including 12,000 km of natural gas pipelines, over 2,800 km of gas distribution networks and gas storage facilities.

2.1(b) HDUF is an ASX-listed trust which is the 100% owner of the Epic Holdings Group. The Epic Holdings Group owns and operates a number of gas transmission pipelines in Australia, being the:

- (i) South West Queensland Pipeline, Queensland;
- (ii) MAPS, South Australia;
- (iii) South East Pipeline System, South Australia; and
- (iv) Pilbara Pipeline System, Western Australia.

### **2.2 The Proposed Acquisition**

APT Pipelines (in its capacity as subsidiary of APL (as trustee of the Australian Pipeline Trust)), or its wholly owned subsidiary (**Acquirer**), proposes to acquire all issued shares in HDUF which it does not own as at the Commencement Date (**Proposed Acquisition**). As a consequence of the Proposed Acquisition, HDUF will become part of APA, as a wholly owned subsidiary of the Acquirer.

### **2.3 The ACCC's review**

2.3(a) The ACCC commenced its public review of the Proposed Acquisition on 14 December 2011.

2.3(b) The ACCC has conducted market inquiries and considered information provided by APA, industry participants and others. The purpose of the ACCC's inquiries was to assess whether or not the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market in contravention of section 50 of the Act.

## **2.4 The ACCC's competition concerns**

2.4(a) The ACCC has concluded that, in the absence of the Undertaking, the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in:

- (i) an integrated market for the transportation of gas along one or more pipelines in eastern Australia;
- (ii) an integrated market for the supply of ancillary services in relation to the transportation of gas along one or more pipelines in eastern Australia.

2.4(b) In the absence of this Undertaking, the Proposed Acquisition would result in APA owning the majority of the gas transmission pipelines in eastern Australia, and specifically:

- (i) APA would own all of the pipelines servicing the Moomba Basin (being the MSP, the MAPS and the SWQP/QSN Link; and
- (ii) APA would have an interest in all pipelines servicing Adelaide (being the MAPS and SEA Gas).

2.4(c) The ACCC was concerned that, in the absence of this Undertaking, parties wanting to transport gas would have had relatively limited alternatives to dealing with APA for transportation of gas and provision of ancillary services, and that APA would accordingly have an increased incentive and/or ability to:

- (i) increase transportation tariffs on the MSP and/or the MAPS;
- (ii) increase the price of ancillary services on the MSP, the MAPS and/or the SWQP.

2.4(d) The ACCC was also concerned that the Proposed Acquisition, in the absence of this Undertaking, would result in APA having an increased incentive and ability to standardise its pricing and service offering. Specifically, the ACCC considered that prior to the Proposed Acquisition the separate ownership of pipelines in the eastern Australian network provided APA with an incentive to provide customised service solutions, and that this incentive would be diminished as a result of the Proposed Acquisition.

## **2.5 Objective of this Undertaking**

2.5(a) APA has, without admission, offered this Undertaking under section 87B of the Act to divest MAPS, which it would acquire as a result of the Proposed Acquisition, to a purchaser approved by the ACCC.

2.5(b) The objective of this Undertaking is to address the ACCC's competition concerns, which would otherwise arise as a consequence of the Proposed Acquisition. This Undertaking aims to achieve this objective by:

- (i) the maintenance of a viable, effective, stand-alone, independent and long term competitor in the integrated market for the transportation of gas along one or more pipelines in eastern Australia and the integrated market for the supply of ancillary services in relation to the transportation of gas along one or more pipelines in eastern Australia;
- (ii) ensuring the Approved Purchaser has the necessary assets, rights and agreements to compete effectively with APA;
- (iii) maintaining the economic viability, marketability, competitiveness and goodwill of the Divestiture Business prior to divestiture, including ensuring effective ring fencing measures are implemented;
- (iv) requiring APA to hold its interest in the Divestiture Business separate from APA's other assets and businesses pending divestiture of the Divestiture Business;
- (v) requiring APA to appoint an Approved Independent Manager to manage the Divestiture Business from the Control Date to the completion of the divestiture of the Divestiture Business; and
- (vi) providing for the effective oversight of APA's compliance with this Undertaking.

## **3 Commencement of this Undertaking**

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3.1 This Undertaking comes into effect when:

3.1(a) this Undertaking is executed by APA; and

3.1(b) this Undertaking so executed is accepted by the ACCC;

(Commencement Date).

## **4 Cessation of ongoing obligations**

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#### **4.1 Withdrawal**

This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to the withdrawal of this Undertaking in accordance with section 87B of the Act.

#### **4.2 Revocation**

The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

#### **4.3 Waiver**

The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or amend the date by which any such obligation is to be satisfied.

#### **4.4 Completion**

Clauses 1, 2, 3, 4, 9, 11, 12, 13, 14, 15, 16 and 17, survive completion of the obligations in clauses 5, 6, 7, 8, 10, confidential Schedule 4 and Schedule 5.

### **5 Divestiture of the Divestiture Business**

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#### **5.1 Divestiture**

- 5.1(a) APA must, in accordance with this Undertaking, divest, or cause the divestiture of, the Divestiture Business to an Approved Purchaser.
- 5.1(b) APA must divest, or cause the divestiture of, the Divestiture Business by the:
- (i) sale, assignment, transfer or licence of all of the assets in confidential Schedule 5 to the Approved Purchaser pursuant to the Approved Sale and Purchase Agreement and within the Initial Sale Period, otherwise clause 10 applies;
  - (ii) transfer or grant to the Approved Purchaser of all Consents pursuant to clause 5.2;
  - (iii) transfer of all personnel required pursuant to clause 5.3;
  - (iv) compliance with any Approved Technical Assistance Agreement required pursuant to clause 5.4; and
  - (v) compliance with any Approved Interim Supply Agreement required pursuant to clause 5.5.

## 5.2 Consents

### 5.2(a) APA must:

- (i) obtain or assist the Approved Purchaser to obtain as expeditiously as possible, all Consents as required before completion of the divestiture of the Divestiture Business;
- (ii) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;
- (iii) act in good faith in its negotiations with the Approved Purchaser in relation to obtaining any Consents;
- (iv) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents; and
- (v) enter an Approved Interim Supply Agreement with the Approved Purchaser, or vary any existing Approved Interim Supply Agreement as required by the Approved Purchaser, in relation to any goods or services that are required for the operation of the Divestiture Business which may be affected by any failure to gain a Consent.

### 5.2(b) If, seven Business Days before completion of the divestiture of the Divestiture Business, the Approved Purchaser fails to obtain or is unable to obtain one or more Consents, then APA must:

- (i) immediately provide to the ACCC, in writing, details of the:
  - (A) Consents that have not been obtained;
  - (B) reasons why the Consents have not been obtained; and
  - (C) information or material required to obtain the Consents; and
- (ii) continue to do everything in its power to satisfy clause 5.2(a) as soon as possible after the completion of the divestiture of the Divestiture Business (and until such time as clause 5.2(a) is satisfied).

### 5.2(c) Even if APA has complied with clauses 5.2(a) and 5.2(b), it remains a breach of this Undertaking if APA is unable to effect the divestiture of the Divestiture Business by reason of a failure to obtain Consents.

### 5.3 Personnel

5.3(a) At the option of the Approved Purchaser, APA must transfer to the Approved Purchaser, effective on the date of the divestiture of the Divestiture Business:

- (i) all Required Personnel; and
- (ii) any Relevant Employees identified by the Approved Purchaser that are employed or engaged by APA;

who consent to the transfer of their employment or contract for service to the Approved Purchaser (**Transferred Personnel**).

5.3(b) Except as permitted in accordance with clause 8.5(b)(iv), APA must not directly or indirectly:

- (i) redeploy any Relevant Employee to any other business operated by APA prior to the divestiture of the Divestiture Business; or
- (ii) procure, promote, or encourage the transfer of any of the Transferred Personnel from the Approved Purchaser to APA for a period of 12 months after the divestiture of the Divestiture Business is completed.

5.3(c) When fulfilling its obligations under this clause 5, APA must:

- (i) not directly or indirectly discourage any Relevant Employee or Transferred Personnel from commencing, continuing or seeking employment with, or providing services to, the Approved Purchaser;
- (ii) release the Transferred Personnel from any obligations to provide services to APA; and
- (iii) release the Transferred Personnel from any non-compete or similar restraint of trade obligation, to the extent that such an obligation would otherwise prevent the person from performing his or her contemplated role in relation to the Divestiture Business or Unsold Business.

5.3(d) [Clause 2 of Confidential Schedule 4]

#### **5.4 Technical Assistance**

5.4(a) At the option of the Approved Purchaser, APA must provide Technical Assistance to the Approved Purchaser pursuant to an Approved Technical Assistance Agreement, subject to the Technical Assistance being:

- (i) required by the Approved Purchaser in order to operate the Divestiture Business;
- (ii) provided on a transitional basis for no more than 12 months, which period is to be nominated by the Approved Purchaser, or such other period as agreed in writing with the ACCC;
- (iii) provided at cost and otherwise on arm's length terms; and
- (iv) approved by the ACCC pursuant to clause 6.3(a) (i) (B).

5.4(b) For the avoidance of doubt, any option to renew the supply of Technical Assistance exercised pursuant to the Approved Technical Assistance Agreement can only be exercised subject to the requirements of clause 5.4(a) being satisfied.

#### **5.5 Interim Supply Agreements**

5.5(a) APA must ensure the continuous supply of any goods or services, which may include labour hire, facilities and premises leases and licences or shared services, which are the subject of any Approved Interim Supply Agreement for the period of the Approved Interim Supply Agreement.

5.5(b) APA must ensure that any Approved Interim Supply Agreement:

- (i) is necessary to enable the Approved Purchaser to be a viable, effective, stand-alone independent and long-term competitor in the markets identified in clause 2.4(a);
- (ii) lasts for a period of no longer than 12 months, which period is to be nominated by the Approved Purchaser, or such other period as agreed in writing with the ACCC;
- (iii) provides for the supply or re-supply of the included goods and services at cost price;
- (iv) is on such terms other than price which are no less favourable to the Approved Purchaser than arm's length terms; and
- (v) is approved by the ACCC pursuant to clause 6.3(a) (i) (C).



- 5.5(c) For the avoidance of doubt, any option to renew the interim supply of goods or services exercised pursuant to the Approved Interim Supply Agreement can only be exercised subject to the requirements of clause 5.5(b) being satisfied.

## **6 Divestiture of the Divestiture Business to an Approved Purchaser**

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### **6.1 Divestiture only to an Approved Purchaser**

APA must divest the Divestiture Business to an Approved Purchaser, and must not authorise the Approved Divestiture Agent to divest the Divestiture Business to a purchaser other than an Approved Purchaser.

### **6.2 Provision of a notice for a Proposed Purchaser**

- 6.2(a) To seek approval for a Proposed Purchaser in accordance with clause 6.3, APA or the Approved Divestiture Agent must provide the ACCC with a Proposed Purchaser Notice.
- 6.2(b) The Proposed Purchaser Notice must be provided to the ACCC at least 20 Business Days prior to the end of the Initial Sale Period.
- 6.2(c) If APA obtains approval for more than one Approved Purchaser, it must only divest the Divestiture Business to one of those Approved Purchasers.

### **6.3 Approval of a Proposed Purchaser after the Commencement Date**

- 6.3(a) After receiving a Proposed Purchaser Notice, the ACCC must decide whether to:
- (i) approve the person named in the Proposed Purchaser Notice as the Approved Purchaser, which includes approving:
    - (A) the draft sale and purchase agreement attached to the Proposed Purchaser Notice;
    - (B) any draft technical assistance agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clause 5.4; and
    - (C) any draft interim supply agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clause 5.5; or
  - (ii) not approve the person named in the Proposed Purchaser Notice as the Approved Purchaser.

- 6.3(b) Without limiting the ACCC's discretion, in making the decision described in clause 6.3(a), the factors to which the ACCC may have regard include whether the:
- (i) draft sale and purchase agreement is consistent with this Undertaking and otherwise acceptable to the ACCC;
  - (ii) Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
  - (iii) Proposed Purchaser is independent of, and has no direct or indirect interest in, APA;
  - (iv) Proposed Purchaser is of good financial standing;
  - (v) Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
  - (vi) Proposed Purchaser is able to conduct the Divestiture Business effectively; and
  - (vii) divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including in relation to the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser.
- 6.3(c) Within 10 Business Days after receiving a Proposed Purchaser Notice, the ACCC must notify APA in writing of its decisions made pursuant to clause 6.3(a).
- 6.3(d) The ACCC may extend the period within which it will provide the notice described in clause 6.3(c) by notifying APA in writing of the extension within 10 Business Days after receiving the Proposed Purchaser Notice.
- 6.3(e) Any extension of time by the ACCC pursuant to clause 6.3(d) extends the Initial Sale Period by the same length of time.
- 6.3(f) The ACCC may revoke an Approved Purchaser's status as the Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

## **7 Divestiture Business Protection**

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### **7.1 Protection of the Divestiture Business**

APA must not sell or transfer its interest, or any assets comprising part of, or used in, the Divestiture Business (other than the sale of goods or

services in the ordinary course of business) or make any Material Change, except in accordance with this Undertaking, as required or approved by the Approved Independent Manager.

## **7.2 APA's obligations in relation to the Divestiture Business**

Without limiting this clause 7, APA must, from the Control Date until the completion of the divestiture of the Divestiture Business:

- 7.2(a) ensure that APA is not involved in the management and operation of the Divestiture Business;
- 7.2(b) ensure that the Divestiture Business is operationally and financially separate from APA unless this Undertaking otherwise provides;
- 7.2(c) ensure that the books and records of the Divestiture Business are kept separate from those of APA, except to the extent necessary for APA to carry out a Permitted Purpose;
- 7.2(d) deal with personnel of the Divestiture Business in accordance with the requirements of clause 5.3;
- 7.2(e) provide access to working capital and sources of credit for the Divestiture Business in a manner which is consistent with the financing of the Divestiture Business before the Control Date;
- 7.2(f) provide such administrative and technical support to the Divestiture Business in a manner which is consistent with the operation of the Divestiture Business before the Control Date and in accordance with any plans established before the Control Date;
- 7.2(g) ensure that the Divestiture Business has, at APA's cost, access to and use of the personnel required by the Approved Independent Manager so that the Divestiture Business can continue to operate as a viable competitive going concern;
- 7.2(h) ensure that, except as otherwise approved by the Approved Independent Manager, any personnel (including contractors) concerned with the management or operation of the Divestiture Business are not concerned with the management or operation of any aspect of APA's businesses other than the Divestiture Business;
- 7.2(i) take all steps available to it to ensure that the Divestiture Business is managed and operated in the ordinary course of business by the Approved Independent Manager as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business as at the Control Date;

- 7.2(j) minimise, and take all steps available to it to ensure that the Approved Independent Manager minimises, any risk of loss of competitive potential for the Divestiture Business;
- 7.2(k) take all steps available to it to ensure that the Approved Independent Manager maintains the supply of those goods and services that are part of the Divestiture Business to existing customers in a manner consistent with the supply of those goods and services as at the Control Date;
- 7.2(l) take all steps available to it to ensure that the Approved Independent Manager maintains the standards of promotion and sale of those goods and services that are part of the Divestiture Business as at the Control Date;
- 7.2(m) take all steps available to it to ensure that the Divestiture Business continues its existing Agreements with customers, suppliers and other third parties that were in place at the Control Date;
- 7.2(n) take all steps available to it to ensure Material Contracts for the supply of goods or services are renewed or replaced upon expiry, subject to any changes reasonably and legally required to ensure separation of the Divestiture Business in accordance with the Approved Separation and Management Plan and which are notified to the ACCC in accordance with clause 7.4; and
- 7.2(o) take all steps available to it to ensure that the Approved Independent Manager carries out the promotion and marketing of the products and services which form part of the Divestiture Business in accordance with any plans established before the Control Date.

### **7.3 Direction to personnel**

As soon as practicable after the Commencement Date, APA must direct its personnel, including directors, contractors, managers, officers, employees and agents, not to do anything inconsistent with APA's obligations under this Undertaking.

### **7.4 Notification of separation changes**

- 7.4(a) APA must, within 10 Business Days after the Control Date, notify the ACCC of any changes to the Divestiture Business and/or Approved Separation and Management Plan that APA or the Approved Independent Manager intend to make to ensure the separation of the Divestiture Business as required by clause 7.2, or otherwise in accordance with this Undertaking (**Separation Change Notification**).
- 7.4(b) Within five Business Days after receiving a Separation Change Notification, the ACCC will notify APA in writing of its decision to:

- (i) approve any proposed changes set out in the Separation Change Notification; or
  - (ii) not approve any proposed changes set out in the Separation Change Notification.
- 7.4(c) APA must implement any changes approved by the ACCC and notified to APA pursuant to clause 7.4(b)(i) within five Business Days after being so notified, or such other period as agreed in writing with the ACCC.

## **7.5 Ring Fenced Information**

- 7.5(a) APA must, on the Commencement Date, and for a period of 12 months following the divestiture of the Divestiture Business, appoint the Company Secretary of APA, or such other person as agreed in writing with the ACCC, who:
- (i) has been notified to the ACCC; and
  - (ii) has executed the Confidentiality Deed,
- as the '**Ring Fence Officer**'.
- 7.5(b) APA must procure that the Ring Fence Officer:
- (i) establishes confidentiality protocols as required by this clause 7.5;
  - (ii) on request by the ACCC or an Undertaking Appointment, provides written reports regarding the protocols put in place by APA to comply with this clause 7.5; and
  - (iii) follows any direction given to him or her by the ACCC or an Undertaking Appointment in relation to the performance of his or her functions as the Ring Fence Officer.
- 7.5(c) The ACCC may direct APA to terminate the appointment of the Ring Fence Officer, and appoint a replacement, if in the ACCC's view the Ring Fence Officer acts inconsistently with the provisions of this Undertaking.
- 7.5(d) APA must not, at any time from the Commencement Date, use or disclose any confidential information about the Divestiture Business gained from:
- (i) the Approved Independent Manager in accordance with clauses 7.5(f) and 7.5(g);

- (ii) the carrying out of due diligence in relation to HDUF and/or the Divestiture Business or otherwise obtained in connection with, or as a result of, the Proposed Acquisition;
- (iii) ownership of the Divestiture Business; or
- (iv) fulfilling any obligations pursuant to this Undertaking;

**(Ring Fenced Information)** except to the extent required for a Permitted Purpose in accordance with the provisions of this clause 7.5.

7.5(e) APA may only disclose Ring Fenced Information to those officers, employees, contractors and advisers within, or engaged by, APA who need to know the information to carry out a Permitted Purpose and who:

- (i) have signed and provided to the Ring Fence Officer and the Approved Independent Manager, a Confidentiality Deed; and
- (ii) are not directly involved in any way in the negotiation and/or administration of transmission or ancillary service supply contracts for, or those areas of, APA's business,

**(Permitted Personnel).**

7.5(f) The Ring Fence Officer may, in writing, request Ring Fenced Information for or on behalf of Permitted Personnel, from the Approved Independent Manager, setting out:

- (i) why the Permitted Personnel require the Ring Fenced Information in order to perform a Permitted Purpose;
- (ii) how the Ring Fenced Information will be used to fulfil the Permitted Purpose; and
- (iii) who will have access to the Ring Fenced Information requested.

7.5(g) Upon receiving a request from the Ring Fence Officer in accordance with clause 7.5(f), the Approved Independent Manager will decide whether or not to provide access to that information, having regard to the factors set out in clauses 7.5(e) and 7.5(f) and the objectives of this Undertaking and, if access is permitted, the conditions of such access.

7.5(h) APA must ensure that the Ring Fence Officer:

- (i) retains original copies of all Confidentiality Deeds executed pursuant to this Undertaking;

- (ii) maintains a record of all persons who have accessed Ring Fenced Information, including the relevant dates on which the particular Ring Fenced Information was accessed; and
  - (iii) provides copies of these documents to the ACCC or an Undertaking Appointment immediately upon request.
- 7.5(i) APA must:
- (i) prevent any Ring Fenced Information from being:
    - (A) communicated, disclosed, used or accessed in a manner not permitted by this clause 7.5; or
    - (B) used for a purpose other than a Permitted Purpose, including for a purpose associated with a business other than the Divestiture Business;
  - (ii) ensure all Confidentiality Deeds executed by Permitted Personnel are complied with;
  - (iii) take all steps to prevent breach of, and enforce, the obligation of confidentiality set out in this Undertaking in relation to Ring Fenced Information; and
  - (iv) take all steps to prevent access to Ring Fenced Information by persons who are not Permitted Persons, including by:
    - (A) maintaining Ring Fenced Information on files and on systems that are separate from those used by personnel of APA who are not entitled to use the Ring Fenced Information; and
    - (B) prohibiting access to Ring Fenced Information by personnel of APA who are not entitled to access the Ring Fenced Information.
- 7.5(j) APA must immediately advise the ACCC of any breach of the obligations of confidentiality in relation to Ring Fenced Information as soon as APA becomes aware of the breach and, in any event, within two Business Days of APA becoming aware of the breach.

## **8 Independent Management of the Divestiture Business**

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### **8.1 Obligation to appoint an Approved Independent Manager**

- 8.1(a) APA must appoint and maintain an Approved Independent Manager to manage the Divestiture Business, from the Control Date until the

completion of the divestiture of the Divestiture Business in accordance with this Undertaking.

8.1(b) Without limiting its obligations in this Undertaking, APA must:

- (i) comply with and enforce the Approved Terms of Appointment of the Approved Independent Manager;
- (ii) maintain and fund the Approved Independent Manager to carry out his or her functions, including:
  - (A) indemnifying the Approved Independent Manager for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Manager of his or her functions as the Approved Independent Manager except where such expenses, loss, claim or damage arise out of gross negligence, fraud, misconduct or breach of duty by the Approved Independent Manager;
  - (B) ensuring that the Approved Independent Manager is fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) which the Approved Independent Manager considers are required by the Divestiture Business; and
  - (C) providing and paying for any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager; and
- (iii) not interfere with the authority of, or otherwise hinder, the Approved Independent Manager's ability to carry out his or her obligations as the Approved Independent Manager, including:
  - (A) accepting (and directing its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved Independent Manager as to the control, management, financing and operations of the Divestiture Business, and for the Divestiture Business to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;
  - (B) providing access to the facilities, sites or operations of the Divestiture Business required by the Approved Independent Manager;
  - (C) providing to the Approved Independent Manager any information or documents requested by the Approved



Independent Manager that he or she considers necessary for managing and operating the Divestiture Business or for reporting to or otherwise advising the ACCC; and

(D) not requesting information or reports regarding the Divestiture Business or from the personnel of the Divestiture Business except through the Approved Independent Manager; and

(iv) not appoint the Approved Independent Manager, or have any Agreements with the Approved Independent Manager, to utilise the Approved Independent Manager's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Manager ceases to act in the role of the Approved Independent Manager.

## **8.2 Approval of Roland Sleeman as the Approved Independent Manager**

8.2(a) Prior to the Commencement Date, and as a condition of the ACCC's acceptance of this Undertaking:

(i) the ACCC approved Roland Sleeman as the Approved Independent Manager, together with the Approved Terms of Appointment and Approved Separation and Management Plan; and

(ii) APA appointed Roland Sleeman as the Approved Independent Manager on the Approved Terms of Appointment, and forwarded to the ACCC a copy of the executed Approved Terms of Appointment.

## **8.3 Resignation, revocation or termination of the Approved Independent Manager**

8.3(a) APA must immediately notify the ACCC if the Approved Independent Manager resigns or otherwise stops acting as the Approved Independent Manager before the completion of the divestiture of the Divestiture Business.

8.3(b) The ACCC may revoke the Approved Independent Manager's status as the Approved Independent Manager if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

8.3(c) The ACCC may approve any proposal by, or alternatively may direct, APA to terminate the appointment of the Approved Independent Manager if in the ACCC's view the Approved Independent Manager acts inconsistently with the provisions of this Undertaking or his/her Approved Terms of Appointment.

#### **8.4 Replacement of Approved Independent Manager**

- 8.4(a) If the Approved Independent Manager resigns, has his or her status revoked, or appointment terminated pursuant to clause 8.3, prior to the divestiture of the Divestiture Business, APA must, within five Business Days after the relevant event occurring, provide the ACCC with a Proposed Independent Manager Notice.
- 8.4(b) If the ACCC receives a Proposed Independent Manager Notice, the ACCC must decide whether to:
- (i) approve the appointment of the person named in the Proposed Independent Manager Notice as the Approved Independent Manager, which includes approving the:
    - (A) terms of appointment attached to the Proposed Independent Manager Notice; and
    - (B) draft separation and management plan attached to the Proposed Independent Manager Notice; or
  - (ii) not approve the person named in the Proposed Independent Manager Notice as the Approved Independent Manager.
- 8.4(c) If clause 8.4(b) (ii) applies, the ACCC may, at its absolute discretion:
- (i) direct APA to submit a Proposed Independent Manager Notice that:
    - (A) names a person identified by the ACCC as the proposed Independent Manager; and/or
    - (B) includes attachments that:
      - 1. relate to the person identified by the ACCC under clause 8.4(c) (i) (A) (if applicable); and/or
      - 2. address any issues identified by the ACCC in relation to the terms of appointment and/or draft separation and management plan; or
  - (ii) identify and approve a person as the Approved Independent Manager together with the:
    - (A) terms of appointment; and/or
    - (B) draft separation and management plan.

- 8.4(d) As soon as practicable, and within two Business Days after any direction by the ACCC under clause 8.4(c) (i), APA must submit a Proposed Independent Manager Notice in accordance with the direction.
- 8.4(e) Without limiting the ACCC's discretion, in making the decisions described in clause 8.4(b) and/or 8.4(c), the factors to which the ACCC may have regard include whether the:
- (i) person named in the Proposed Independent Manager Notice or identified by the ACCC has the qualifications and experience necessary to manage the Divestiture Business;
  - (ii) person named in the Proposed Independent Manager Notice or identified by the ACCC is sufficiently independent of APA;
  - (iii) terms of appointment and the draft separation and management plan are consistent with this Undertaking; and
  - (iv) terms of appointment and the draft separation and management plan are otherwise acceptable to the ACCC.
- 8.4(f) Within 10 Business Days after receiving a Proposed Independent Manager Notice, the ACCC must notify APA in writing of its decisions and any direction made pursuant to clause 8.4(b) and/or 8.4(c).
- 8.4(g) The ACCC may extend the period within which it will provide notice of the decision or direction (if applicable) described in clause 8.4(f) by notifying APA in writing of the extension within 10 Business Days after receiving the Proposed Independent Manager Notice.
- 8.4(h) If the Approved Independent Manager has not been appointed:
- (i) within 17 Business Days after the Approved Independent Manager resigns or otherwise ceases to act as the Approved Independent Manager pursuant to clause 8.3; or
  - (ii) if the ACCC has not received a Proposed Independent Manager Notice within five Business Days after the Approved Independent Manager resigns or otherwise ceases to act pursuant to clause 8.4(a);
- then the provisions of clause 8.4(i) apply.
- 8.4(i) If clause 8.4(h) applies, the ACCC at its absolute discretion may:
- (i) identify and approve a person as the Approved Independent Manager;

- (ii) approve the terms of appointment of the Approved Independent Manager; and
  - (iii) approve the draft separation and management plan.
- 8.4(j) After receiving a notice from the ACCC of its decisions pursuant to clause 8.4(b), 8.4(c)(ii), 8.4(i)(i) or, APA must, within two Business Days:
- (i) appoint the person approved by the ACCC as the Approved Independent Manager on the Approved Terms of Appointment; and
  - (ii) forward to the ACCC a copy of the executed Approved Terms of Appointment within one Business Day of execution.

## **8.5 Obligations and powers of the Approved Independent Manager**

- 8.5(a) APA must procure that any proposed terms of appointment of the Approved Independent Manager include obligations on the Approved Independent Manager to:
- (i) maintain his or her independence from APA, apart from appointment to the role of Approved Independent Manager, including not form any relationship of the types described in paragraph 2(c) of Schedule 3 with APA for the period of his or her appointment;
  - (ii) act in the best interests of the Divestiture Business at all times and not use any confidential information gained through the management of the Divestiture Business other than for performing his or her functions as Approved Independent Manager;
  - (iii) manage the Divestiture Business lawfully in the ordinary course of business, having regard to the nature of the Divestiture Business;
  - (iv) make only those Material Changes to the Divestiture Business which have been approved by the ACCC;
  - (v) operate and manage the Divestiture Business, to the maximum extent practicable, in a manner which is financially and operationally separate from APA;
  - (vi) keep the books and records of the Divestiture Business separate from those of APA;
  - (vii) not disclose any confidential information about the Divestiture Business to APA other than in accordance with clause 7.5(g);

- (viii) keep records of all requests to access Ring Fenced Information under clause 7.5(f) including whether or not access was granted, and on what terms;
- (ix) implement specific measures to maintain the confidentiality of any competitively sensitive information of the Divestiture Business;
- (x) co-operate with the requests of any Approved Divestiture Agent or Approved Independent Auditor appointed pursuant to this Undertaking;
- (xi) provide the following reports directly to the ACCC:
  - (A) a monthly written report regarding the implementation of and any suggested changes to the Approved Separation and Management Plan; and
  - (B) an immediate report of any issues that arise in relation to the implementation of the Approved Separation and Management Plan or compliance with this Undertaking by any person named in this Undertaking; and
- (xii) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Manager pursuant to this Undertaking.

8.5(b) APA must procure that any proposed terms of appointment for the Approved Independent Manager provide the Approved Independent Manager with the sole authority to:

- (i) manage and operate the Divestiture Business according to the Approved Separation and Management Plan until the completion of the divestiture of the Divestiture Business;
- (ii) decide whether or not to provide access and the manner of such access in relation to competitively sensitive information relating to the Divestiture Business requested by APA which is not covered by the protocol in the Approved Separation and Management Plan or in accordance with clause 7.5 relating to Ring Fenced Information;
- (iii) renew or replace upon expiry Material Contracts for the provision of goods or services to the Divestiture Business on commercial terms favourable to the Divestiture Business;
- (iv) engage, redeploy or make redundant personnel employed in the Divestiture Business as the Approved Independent Manager determines necessary; and

- (v) engage any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager.

## **9 Independent Audit**

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### **9.1 Obligation to appoint an Approved Independent Auditor**

9.1(a) APA must appoint and maintain an Approved Independent Auditor to audit and report upon APA's compliance with this Undertaking.

9.1(b) Without limiting its obligations in this Undertaking, APA must:

- (i) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;
- (ii) maintain and fund the Approved Independent Auditor to carry out his or her functions including:
  - (A) indemnifying the Approved Independent Auditor for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Auditor of his or her functions as the Approved Independent Auditor except where such expenses, loss, claim or damage arise out of gross negligence, fraud, misconduct or breach of duty by the Approved Independent Auditor; and
  - (B) providing and paying for any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor; and
- (iii) not interfere with, or otherwise hinder, the Approved Independent Auditor's ability to carry out his or her functions as the Approved Independent Auditor, including:
  - (A) directing APA's personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;
  - (B) providing access to the facilities, sites or operations of the Divestiture Business and APA's other businesses as required by the Approved Independent Auditor;
  - (C) providing to the Approved Independent Auditor any information or documents requested by the Approved Independent Auditor that he or she considers necessary for carrying out his or her functions as the Approved

Independent Auditor or for reporting to or otherwise advising the ACCC;

- (D) not requesting any information relating to the Compliance Audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and
- (E) not appointing the Approved Independent Auditor, or having any Agreements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

## **9.2 Approval of the Approved Independent Auditor**

- 9.2(a) At least 15 Business Days before the Control Date, APA must provide the ACCC with a Proposed Independent Auditor Notice.
- 9.2(b) After receiving a Proposed Independent Auditor Notice, the ACCC must decide whether to:
  - (i) approve the appointment of the person named in the Proposed Independent Auditor Notice as the Approved Independent Auditor which includes approving the:
    - (A) terms of appointment attached to the Proposed Independent Auditor Notice; and
    - (B) draft audit plan attached to the Proposed Independent Auditor Notice; or
  - (ii) not approve the person named in the notice as the Proposed Independent Auditor.
- 9.2(c) If clause 9.2(b)(ii) applies, the ACCC may, at its absolute discretion:
  - (i) direct APA to submit a Proposed Independent Auditor Notice that:
    - (A) names a person identified by the ACCC as the proposed Independent Auditor; and/or
    - (B) includes attachments that:
      - 1. relate to the person identified by the ACCC under clause 9.2(c)(i)(A) (if applicable); and/or

- 2. address any issues identified by the ACCC in relation to the terms of appointment and/or draft audit plan; or
- (ii) identify and approve a person as the Approved Independent Auditor together with the:
  - (A) terms of appointment; and/or
  - (B) draft audit plan.
- 9.2(d) As soon as practicable, and within two Business Days of any direction by the ACCC under clause 9.2(c) (i), APA must submit a Proposed Independent Auditor Notice in accordance with the direction.
- 9.2(e) Without limiting the ACCC's discretion, in making the decisions described in clause 9.2(b) or 9.2(c), the factors to which the ACCC may have regard include whether the:
  - (i) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
  - (ii) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of APA;
  - (iii) terms of appointment and the draft audit plan are consistent with this Undertaking; and
  - (iv) terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.
- 9.2(f) Within 10 Business Days after receiving a Proposed Independent Auditor Notice, the ACCC must notify APA in writing of its decisions and any direction made pursuant to clause 9.2(b) and/or 9.2(c).
- 9.2(g) The ACCC may extend the period within which it will provide notice of the decision or direction (if applicable) described in clause 9.2(f) by notifying APA in writing of the extension within 10 Business Days after receiving the Proposed Independent Auditor Notice.
- 9.2(h) If the Approved Independent Auditor has not been appointed:
  - (i) by the Control Date,
  - (ii) within 17 Business Days of the Approved Independent Auditor resigning or otherwise ceasing to act as the Approved Independent Manager pursuant to clause 9.6; or



- (iii) if the ACCC has not received a Proposed Independent Auditor Notice within five Business Days of the Approved Independent Auditor resigning or otherwise ceasing to act pursuant to clause 9.6(d);

then the provisions of clause 9.2(i) apply.

9.2(i) If clause 9.2(h) or 9.6(d) applies, the ACCC at its absolute discretion may:

- (i) identify and approve a person as the Approved Independent Auditor;
- (ii) approve the terms of appointment of the Approved Independent Auditor; and
- (iii) approve the draft audit plan.

### **9.3 Appointment of the Approved Independent Auditor**

9.3(a) After receiving notice from the ACCC of its decisions pursuant to clause 9.2 APA must, within two Business Days:

- (i) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and
- (ii) forward to the ACCC a copy of the executed Approved Terms of Appointment within one Business Day of execution.

### **9.4 Obligations and powers of the Approved Independent Auditor**

9.4(a) APA must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:

- (i) maintain his or her independence from APA, apart from appointment to the role of Approved Independent Auditor, including not form any relationship of the types described in paragraph 2(c) of Schedule 3 with APA for the period of his or her appointment;
- (ii) conduct compliance auditing according to the Approved Audit Plan;
- (iii) provide the following reports directly to the ACCC:
  - (A) a scheduled written Audit Report as described in clause 9.5;

- (B) an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor or in relation to compliance with this Undertaking by any person named in this Undertaking; and
  - (iv) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under this Undertaking.
- 9.4(b) APA must procure that any proposed terms of appointment of the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:
- (i) access the facilities, sites or operations of the Divestiture Business and APA's other businesses as required by the Approved Independent Auditor;
  - (ii) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and
  - (iii) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

## 9.5 Compliance Audit

- 9.5(a) The Approved Independent Auditor must conduct an audit and prepare a detailed report (**Audit Report**) on:
- (i) APA's compliance with this Undertaking;
  - (ii) all of the reasons for the conclusions reached in the Audit Report;
  - (iii) any qualifications made by the Approved Independent Auditor in forming his or her views;
  - (iv) any recommendations by the Approved Independent Auditor to improve:
    - (A) the Approved Audit Plan;
    - (B) the integrity of the auditing process;
    - (C) APA's processes or reporting systems in relation to compliance with this Undertaking;

- (D) APA's implementation of the confidentiality protocols established in accordance with clause 7.5; and
  - (E) APA's compliance with this Undertaking; and
  - (v) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.
- 9.5(b) The Approved Independent Auditor is to provide an Audit Report to the ACCC and APA at the following times:
- (i) within 10 Business Days after the Control Date, at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved Audit Plan (**Establishment Audit**);
  - (ii) every month from the date of the Establishment Audit until the first month after the date on which the divestiture of the Divestiture Business is completed;
  - (iii) every three months after the date of provision of the last Audit Report pursuant to clause 9.5(b)(ii), until the ACCC confirms in writing to APA that it is satisfied that the divestiture of the Divestiture Business pursuant to clause 5 has been completed; and
  - (iv) a final report due three months after the last report provided pursuant to clause 9.5(b)(iii).
- 9.5(c) APA must implement any recommendations of the Approved Independent Auditor made in the Audit Report, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or after a period agreed with the ACCC.
- 9.5(d) APA must comply with any direction of the ACCC in relation to matters arising from the Audit Report within 10 Business Days of being so directed (or such other period as agreed in writing with the ACCC).
- 9.6 Resignation, revocation or termination of the Approved Independent Auditor**
- 9.6(a) APA must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor before the ACCC has provided the written confirmation pursuant to clause 4.1, 4.2 or 4.3.
- 9.6(b) The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

- 9.6(c) The ACCC may approve any proposal by, or alternatively may direct, APA to terminate the appointment of the Approved Independent Auditor if in the ACCC's view the Approved Independent Auditor acts inconsistently with the provisions of this Undertaking or the terms of his or her appointment.
- 9.6(d) If clause 9.6(a), 9.6(b) or 9.6(c) applies, APA must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 9.2(i) applies.

## **10 Failure to divest the Divestiture Business within the Initial Sale Period**

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### **10.1 Sale of the Unsold Business**

In the event that the divestiture of the Divestiture Business to an Approved Purchaser is not completed by the end of the Initial Sale Period, the Divestiture Business becomes an '**Unsold Business**' and the provisions of this clause 10 apply.

### **10.2 Obligation to appoint an Approved Divestiture Agent**

- 10.2(a) APA must appoint and maintain an Approved Divestiture Agent from the end of the Initial Sale Period to effect the divestiture of the Unsold Business.
- 10.2(b) Without limiting its obligations in this Undertaking, APA must from the end of the Initial Sale Period:
- (i) comply with and enforce the Approved Terms of Appointment for the Approved Divestiture Agent;
  - (ii) maintain and fund the Approved Divestiture Agent to carry out his or her functions, including:
    - (A) indemnifying the Approved Divestiture Agent for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Divestiture Agent of his or her functions as the Approved Divestiture Agent except where such expenses, loss, claim or damage arise out of gross negligence, fraud, misconduct or breach of duty by the Approved Divestiture Agent;
    - (B) providing and paying for any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent; and

- (C) paying such fees as are agreed between the Approved Divestiture Agent and APA (but not fees contingent on the price to be obtained for the Unsold Business). If an agreement as to fees cannot be reached between the Approved Divestiture Agent and APA at least 15 Business Days before the end of the Initial Sale Period, APA must pay such fees as are directed by the ACCC;
- (iii) not interfere with, or otherwise hinder, the Approved Divestiture Agent's ability to carry out his or her functions as the Approved Divestiture Agent, including:
  - (A) directing its personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 10;
  - (B) providing access to the facilities, sites or operations of the Unsold Business as required by the Approved Divestiture Agent; and
  - (C) providing to the Approved Divestiture Agent any information, documents or other assistance requested by the Approved Divestiture Agent that he or she considers necessary for carrying out his or her functions as the Approved Divestiture Agent or for reporting to or otherwise advising the ACCC;
- (iv) within three Business Days after receiving notice from the ACCC pursuant to clause 6.3(c), APA must instruct the Approved Divestiture Agent to complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the documents approved by the ACCC pursuant to clause 6.3(a)(i); and
- (v) other than in accordance with clause 10.2(b)(iv), not instruct the Approved Divestiture Agent to sell the Unsold Business.

### **10.3 Approval of the Approved Divestiture Agent**

- 10.3(a) At least 15 Business Days prior to the end of the Initial Sale Period, if the divestiture of the Divestiture Business has not been completed, APA must provide the ACCC with a Proposed Divestiture Agent Notice.
- 10.3(b) After receiving a Proposed Divestiture Agent Notice, the ACCC must decide whether to:
  - (i) approve the appointment of the person named in the Proposed Divestiture Agent Notice as the Approved Divestiture Agent which includes approving the:

- (A) terms of appointment attached to the Proposed Divestiture Agent Notice;
  - (B) draft business sale agreement attached to the Proposed Divestiture Agent Notice; and
  - (C) draft marketing and sale plan attached to the Proposed Divestiture Agent Notice; or
- (ii) not approve the person named in the Proposed Divestiture Agent Notice as the Approved Divestiture Agent.
- 10.3(c) If clause 10.3(b)(ii) applies, the ACCC may, at its absolute discretion:
- (iii) direct APA to submit a Proposed Divestiture Agent Notice that:
    - (A) names a person identified by the ACCC as the proposed divestiture agent; and/or
    - (B) includes attachments that:
      1. relate to the person identified by the ACCC under clause 10.3(c)(i)(A) (if applicable); and/or
      2. address any issues identified by the ACCC in relation to the terms of appointment, draft business sale agreement and/or draft marketing and sale plan; or
  - (iv) identify and approve a person as the Approved Divestiture Agent together with the:
    - (A) terms of appointment;
    - (B) draft business sale agreement; and
    - (C) draft marketing and sale plan.
- 10.3(d) As soon as practicable, and within two Business Days of any direction by the ACCC under clause 10.3(c)(i), APA must submit a Proposed Divestiture Agent Notice in accordance with the direction.
- 10.3(e) Without limiting the ACCC's discretion, in making the decisions described in clause 10.3(b) or 10.3(c), the factors to which the ACCC may have regard include whether:
- (i) the person named in Proposed Divestiture Agent Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Divestiture Agent;

- (ii) the person named in the Proposed Divestiture Agent Notice or identified by the ACCC is sufficiently independent of APA;
  - (iii) the terms of appointment, draft business sale agreement and draft marketing and sale plan are consistent with this Undertaking; and
  - (iv) the terms of appointment, draft business sale agreement and draft marketing and sale plan are otherwise acceptable to the ACCC.
- 10.3(f) Within 10 Business Days after receiving a Proposed Divestiture Agent Notice, the ACCC must notify APA in writing of decisions and any direction made pursuant to clause 10.3(b) and/or 10.3(c).
- 10.3(g) The ACCC may extend the period within which it will provide notice of the decision or direction (if applicable) described in clause 10.3(f) by notifying APA in writing of the extension within 10 Business Days after receiving the Proposed Divestiture Agent Notice.
- 10.3(h) Any extension of time by the ACCC under clause 10.3(g) extends the Initial Sale Period by the same length of time.
- 10.3(i) If the Approved Divestiture Agent has not been appointed:
- (i) within 10 Business Days after the Divestiture Business becomes an Unsold Business;
  - (ii) within 17 Business Days of the Approved Divestiture Agent resigning or otherwise ceasing to act pursuant to clause 10.6; or
  - (iii) if the ACCC has not received a Proposed Divestiture Agent Notice within five Business Days of the Approved Divestiture Agent resigning or otherwise ceasing to act pursuant to clause 10.6(d);
- then the provisions of clause 10.3(j) apply.
- 10.3(j) If clause 10.3(i) applies, the ACCC at its absolute discretion may:
- (i) identify and approve a person as the Approved Divestiture Agent;
  - (ii) approve the terms of appointment of the Approved Divestiture Agent;
  - (iii) approve the draft business sale agreement; and
  - (iv) approve the draft marketing and sale plan.

#### **10.4 Appointment of the Approved Divestiture Agent**

- 10.4(a) After receiving notice from the ACCC of its decisions pursuant to clause 10.3, APA must, within two Business Days:
- (i) appoint the person approved by the ACCC as the Approved Divestiture Agent on the relevant Approved Terms of Appointment; and
  - (ii) forward to the ACCC a copy of the executed Approved Terms of Appointment within one Business Day of execution.

#### **10.5 Obligations and powers of the Approved Divestiture Agent**

- 10.5(a) APA must procure that any proposed terms of appointment for the Approved Divestiture Agent include obligations on the Approved Independent Divestiture Agent to:
- (i) maintain his or her independence from APA apart from appointment to the role of Approved Divestiture Agent, including not form any relationship of the types described in clause 2(c) of Schedule 3 with APA for the period of his or her appointment;
  - (ii) not use any confidential information gained through the divestiture of the Unsold Business other than for performing his or her functions as Approved Divestiture Agent;
  - (iii) follow the Approved Marketing and Sale Plan;
  - (iv) divest the Unsold Business only to the Approved Purchaser, approved by the ACCC in accordance with clause 6.2(c) with no obligation imposed by APA to achieve a divestiture at a minimum price;
  - (v) use his or her best endeavours to enter into a binding agreement for the divestiture of the Unsold Business as quickly as possible using the Approved Business Sale Agreement;
  - (vi) co-operate with the requests of any Approved Independent Manager or Approved Independent Auditor appointed pursuant to this Undertaking;
  - (vii) every 30 Business Days following appointment of the Approved Divestiture Agent, provide written reports directly to the ACCC which include:
    - (A) information regarding the implementation of the Approved Business Sale Agreement and the Approved Marketing and



- Sale Plan including any previous changes approved by the ACCC;
- (B) information regarding any suggested changes to any Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
  - (C) an account and explanation of all disbursements, fees and charges incurred by the Approved Divestiture Agent in undertaking his or her duties by month and to the date of the report;
  - (D) a schedule of agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.5(b)(iv));
  - (E) the efforts made to sell the Unsold Business;
  - (F) the identity of any advisers engaged;
  - (G) the identity of any persons expressing interest in the Unsold Business; and
  - (H) any other information required by the ACCC;
- (viii) within 30 Business Days after the completion of the divestiture of the Unsold Business, provide a written report directly to the ACCC which includes a final accounting of:
- (A) any moneys derived from the divestiture of the Unsold Business;
  - (B) all disbursements, fees and charges incurred by the Approved Divestiture Agent in fulfilling his or her duties; and
  - (C) all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.5(b)(iv));
- (ix) immediately inform the ACCC of:
- (A) any issues that arise in relation to the implementation of the Approved Sale and Purchase Agreement and any Approved Marketing and Sale Plan;
  - (B) non-compliance with this Undertaking by any person named in this Undertaking; and
  - (C) any offers for the Unsold Business;

- (x) accept any offer for the Unsold Business upon instruction from APA given in accordance with clause 10.2(b)(iv); and
  - (xi) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Divestiture Agent pursuant to this Undertaking.
- 10.5(b) APA must procure that any proposed terms of appointment for the Approved Divestiture Agent contain an irrevocable grant of power of attorney conferring all necessary power and authority on the Approved Divestiture Agent to:
- (i) negotiate with purchasers to divest the Unsold Business on terms considered by the Approved Divestiture Agent in his or her sole discretion to be consistent with this Undertaking and the Approved Marketing and Sale Plan;
  - (ii) execute any agreements with the Approved Purchaser required pursuant to clause 6;
  - (iii) upon instruction pursuant to clause 10.2(b)(iv), complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the Approved Business Sale Agreement; and
  - (iv) engage any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent.
- 10.5(c) Any irrevocable power of attorney granted pursuant to clause 10.5(b) will end upon resignation, termination or revocation of the Approved Divestiture Agent in accordance with clause 10.6 or in the event that the Unsold Business is sold in accordance with this Undertaking.

**10.6 Resignation, revocation or termination of the Approved Divestiture Agent**

- 10.6(a) APA must immediately notify the ACCC in the event that an Approved Divestiture Agent resigns or otherwise stops acting as an Approved Divestiture Agent before the completion of the divestiture of the Unsold Business.
- 10.6(b) The ACCC may revoke an Approved Divestiture Agent's status as the Approved Divestiture Agent if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 10.6(c) The ACCC may approve any proposal by, or alternatively may direct, APA to terminate an Approved Divestiture Agent if in the ACCC's view the Approved Divestiture Agent acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

- 10.6(d) If clause 10.6(a), 10.6(b) or 10.6(c) applies then APA must provide a Proposed Divestiture Agent Notice within five Business Days of the Approved Divestiture Agent resigning or otherwise ceasing to act, otherwise clause 10.3(j) applies.

## **11 Information**

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- 11.1** APA must notify the ACCC and each Undertaking Appointment in writing of the proposed date of each of the following events at least five Business Days before each is proposed to occur:
- 11.1(a) the date on which the APA offer to acquire all remaining issued securities in HDUF becomes unconditional;
- 11.1(b) the Control Date; and
- 11.1(c) the completion of the divestiture of the Divestiture Business.
- 11.2** APA must notify the ACCC and each Undertaking Appointment in writing of the occurrence of each of the following events within one Business Day after the date the event occurs:
- 11.2(a) the date on which the APA offer to acquire all remaining issued units in HDUF becomes unconditional;
- 11.2(b) the Control Date; and
- 11.2(c) the completion of the divestiture of the Divestiture Business.
- 11.3** The ACCC may direct APA in respect of its compliance with this Undertaking to, and APA must:
- 11.3(a) furnish information to the ACCC in the time and in the form requested by the ACCC;
- 11.3(b) produce documents and materials to the ACCC within APA's custody, power or control in the time and in the form requested by the ACCC; and/or
- 11.3(c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 11.4** Any direction made by the ACCC under clause 11.3 will be notified to APA, in accordance with clause 16.
- 11.5** In respect of APA's compliance with this Undertaking or an Undertaking Appointment's compliance with its terms of appointment, the ACCC may request any Undertaking Appointment to:

- 11.5(a) furnish information to the ACCC in the time and in the form requested by the ACCC;
- 11.5(b) produce documents and materials to the ACCC within the Undertaking Appointment's custody, power or control in the time and in the form requested by the ACCC; and/or
- 11.5(c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 11.6** APA will use its best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 11.5.
- 11.7** Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 11 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 11.8** The ACCC may in its discretion to be exercised in good faith:
  - 11.8(a) advise any Undertaking Appointment of any request made by it under this clause 11; and/or
  - 11.8(b) provide copies to any Undertaking Appointment of any information furnished, documents and material produced or information given to it under this clause 11.
- 11.9** Nothing in this clause 11 requires the provision of information or documents in respect of which APA has a claim of legal professional or other privilege.

## **12 Disclosure of the Undertaking**

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- 12.1** APA and the ACCC agree that Schedule 4 will remain confidential until after the completion of the divestiture of the Divestiture Business; and
- 12.2** APA acknowledges that the ACCC may provide each Undertaking Appointment with a copy of this Undertaking which includes an unredacted version of Schedule 4.
- 12.3** APA acknowledges that the ACCC may, subject to clause 12.1:
  - 12.3(a) make this Undertaking publicly available; and
  - 12.3(b) publish this Undertaking on its Public Section 87B Undertakings Register; and

- 12.3(c) from time to time publicly refer to this Undertaking.
- 12.4** Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from disclosing such information as is:
- 12.4(a) required by law;
- 12.4(b) permitted by s 155AAA of the Act;
- 12.4(c) necessary for the purpose of enforcement action under section 87B of the Act; or
- 12.4(d) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.
- 12.5** Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

## **13 Obligation to procure**

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Where the performance of an obligation under this Undertaking requires a Related Body Corporate of APA to take or refrain from taking some action, APA will procure that the Related Bodies Corporate take or refrain from taking that action, as the case may be.

## **14 No Derogation**

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- 14.1** This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by APA of any term of this Undertaking.
- 14.2** Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that APA does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

## **15 Costs**

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- 15.1** APA must pay all of its own costs incurred in relation to this Undertaking.

## 16 Notices

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### 16.1 Giving notices

16.1(a) Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: [mergers@acc.gov.au](mailto:mergers@acc.gov.au),  
Attention: Executive General Manager  
Mergers and Adjudication Group

**With an email copy sent to:**

[mergersucu@acc.gov.au](mailto:mergersucu@acc.gov.au),  
Director, Undertaking Compliance Unit  
Merger Coordination and Strategy Branch

16.1(b) Any notice or communication to APA pursuant to this Undertaking must be sent to:

Name: APA Group  
Address: Level 19, HSBC Centre  
580 George Street, Sydney NSW 2000  
Email Address: [nevenka.codevelle@apa.com.au](mailto:nevenka.codevelle@apa.com.au)  
Attention: Nevenka Codevelle

**With an email copy sent to:**

Name: King & Wood Mallesons  
Address: Level 61 Governor Phillip Tower  
1 Farrer Place, Sydney NSW 2000  
Email Address: [vishual.ahuja@au.kwm.com](mailto:vishual.ahuja@au.kwm.com)  
Attention: Vishual Ahuja

16.1(c) If sent by post, notices are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

16.1(d) If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

## **16.2 Change of contact details**

- 16.2(a) APA or the ACCC must notify the other party of a change to its contact details within three Business Days.
- 16.2(b) Any notice or communication will sent to the most recently advised contact details and subject to clause 16.1(c) and 16.1(d), will be taken to be received.

## **17 Defined terms and interpretation**

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### **17.1 Definitions in the Dictionary**

A term or expression starting with a capital letter:

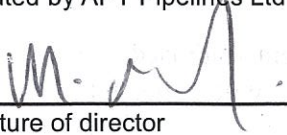
- 17.1(a) which is defined in the Dictionary in Clause 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
- 17.1(b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

### **17.2 Interpretation**

- 17.2(a) Clause 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

Executed as an Undertaking

Executed by APT Pipelines Ltd (ACN 009 666 700) pursuant to section 127(1) of the *Corporations Act 2001* by:

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

**Michael McCormack**

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Date

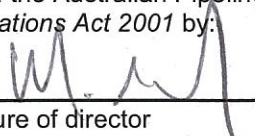
  
\_\_\_\_\_  
Signature of a director / company secretary

**M.T. Knapman**  
**Company Secretary**

\_\_\_\_\_  
Name of director / company secretary (print)

\_\_\_\_\_  
Date

Executed by Australian Pipeline Ltd (ACN 091 344 704) (in its own capacity and in its capacity as trustee of each of the Australian Pipeline Trust and the APT Investment Trust) pursuant to section 127(1) of the *Corporations Act 2001* by:

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

**Michael McCormack**

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Date

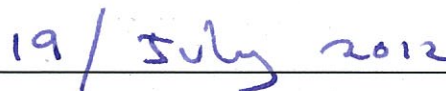
  
\_\_\_\_\_  
Signature of a director / company secretary

**M.T. Knapman**  
**Company Secretary**

\_\_\_\_\_  
Name of director / company secretary (print)


\_\_\_\_\_  
Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* on:



\_\_\_\_\_  
Date:

And signed on behalf of the Commission:

  
\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Chairman



\_\_\_\_\_  
Date



# Schedule 1

## 1. Dictionary

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

**Act** means the *Competition and Consumer Act 2010* (Cth).

**Agreements** means any contract arrangement or understanding including any contract arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

**APA** means has the meaning given to it in clause 1.

**APL** means Australian Pipeline Ltd ACN 091 344 704.

**Approved Audit Plan** means the plan approved by the ACCC in accordance with the terms of this Undertaking, as amended from time to time by ACCC direction given under clause 9.4(a)(iv) by which the Approved Independent Auditor will audit and report upon compliance with the Undertaking.

**Approved Business Sale Agreement** means the standard form contract for the divestiture of the Unsold Business which has been approved by the ACCC in accordance with the terms of this Undertaking.

**Approved Divestiture Agent** means the person appointed under clause 10.4(a)(i).

**Approved Independent Auditor** means the person appointed under clause 9.3(a)(i).

**Approved Independent Manager** means the person named in clause 8.2 or that person's replacement appointed under clause 8.4(j)(i).

**Approved Interim Supply Agreement** means any agreement approved by the ACCC in accordance with the terms of this Undertaking.

**Approved Marketing and Sale Plan** means the plan approved by the ACCC in accordance with the terms of this Undertaking, as amended from time to time by ACCC direction given under clause 10.5(a)(xi), by which the Approved Divestiture Agent will market and effect the divestiture of the Unsold Business.

**Approved Purchaser** means the person approved by the ACCC under clause 6.3(a).

**Approved Sale and Purchase Agreement** means the contract approved by the ACCC in accordance with the terms of this Undertaking by which the Approved Purchaser will acquire the Divestiture Business from APA.

**Approved Separation and Management Plan** means the plan approved by the ACCC in accordance with the terms of this Undertaking as amended from time to time in accordance with clause 8.5(a)(xi)(A) or by ACCC direction given under clause 8.5(a)(xii), by which the Approved Independent Manager will:

- a) separate the Divestiture Business from the business to be retained by APA; and
- b) manage and operate the Divestiture Business independently of APA and any retained business.

**Approved Technical Assistance Agreement** means any agreement approved by the ACCC in accordance with the terms of this Undertaking.

**Approved Terms of Appointment** means the terms of appointment for the Approved Independent Manager, Approved Independent Auditor or Approved Divestiture Agent, as applicable, as approved by the ACCC in accordance with the terms of this Undertaking.

**APT Pipelines** means APT Pipelines Ltd ACN 009 666 700.

**Business Day** means a day other than a Saturday or a Sunday on which banks are open for business generally in the Australian Capital Territory.

**Audit Report** has the meaning given to it in clause 9.5(a).

**Commencement Date** has the meaning given to it in clause 3.1.

**Confidentiality Deed** means a deed, in the form prepared by APA, and approved by the ACCC, by which a recipient of Ring Fenced Information agrees to maintain the confidentiality of that information as if they were a party to this Undertaking.

**Control Date** means the date on which APA has removed the existing HDUF responsible entity and appoints a new APA-nominated responsible entity.

**Consents** means any Government Consents or Third Party Consents.

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

**Divestiture Business** means the assets described in Schedule 5.

**Epic Holdings Group** means Epic Energy Holdings Pty Limited (ACN 109 054 855) and its Related Bodies Corporate, including Epic SA.

**Epic SA** means Epic Energy South Australia Pty Ltd ACN 068 599 815.

**Establishment Audit** has the meaning given to it in clause 9.5(b)(i).

**Government Consents** means any consents from any government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the conduct of the Divestiture Business.

**HDUF** means Hastings Diversified Utilities Fund, an ASX-listed trust, and includes Hastings Funds Management Limited (ACN 058 693 388) in its own capacity and in its capacity as responsible entity for each of the HDUF Epic Trust (ARSN 109 770 961), the HDUF Finance Trust (ARSN 109 770 765) and the HDUF Further Investments Trust (ARSN 109 897 921).

**Initial Sale Period** is defined in clause 1 of confidential Schedule 4.

**MAPS** means the Moomba to Adelaide Pipeline System in South Australia.

**Material Change** means any change to the structure, attributes, extent or operations of the Divestiture Business or product or service sold by a Divestiture Business that may affect, or impact on, the competitiveness of the Divestiture Business.

**Material Contract** means any Agreement that is necessary for the operation of the Divestiture Business.

**Permitted Personnel** has the meaning given to it in clause 7.5(e).

**Permitted Purpose** means a purpose for which APA is required to use or disclose Ring Fenced Information in order to comply with a legal or regulatory obligation (including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure), or to carry out its obligations pursuant to this Undertaking.

**Proposed Acquisition** has the meaning given to it in clause 2.2.

**Proposed Divestiture Agent** means a person named in a Proposed Divestiture Agent Notice.

**Proposed Divestiture Agent Notice** means a completed notice in the form of Schedule 3 provided to the ACCC with all required attachments in relation to the Proposed Divestiture Agent.

**Proposed Independent Auditor** means a person named in a Proposed Independent Auditor Notice.

**Proposed Independent Auditor Notice** means a completed notice in the form of Schedule 3 provided to the ACCC with all required attachments in relation to the Proposed Independent Auditor.

**Proposed Independent Manager** means a person named in a Proposed Independent Manager Notice.

**Proposed Independent Manager Notice** means a completed notice in the form of Schedule 3 provided to the ACCC with all required attachments in relation to the Proposed Independent Manager.

**Proposed Purchaser** means a person named in a Proposed Purchaser Notice.

**Proposed Purchaser Notice** means a completed notice in the form of Schedule 2 provided to the ACCC with all required attachments in relation to the Proposed Purchaser.

**Related Entities** has the meaning given to it by section 9 of the Corporations Act.

**Related Parties** has the meaning given to it by section 228 of the Corporations Act.

**Related Bodies Corporate** has the meaning given to it by section 50 of the Corporations Act.

**Relevant Employees** means employees or service providers under a contract for service who are wholly or primarily engaged in, or necessary for, the operation of the Divestiture Business, including employees or service providers with responsibilities in relation to the commercial (including negotiation of customer or supplier contracts, risk management, sustainability and regulation), control room and operational (including engineering, planning and maintenance) aspects of the Divestiture Business, as at the Control Date.

**Required Personnel** means any personnel determined by the Independent Manager as being necessary or desirable for the operation of the Divestiture Business.

**Ring Fenced Information** has the meaning given to it in clause 7.5(d).

**Ring Fence Officer** has the meaning given to it in clause 7.5(a).

**Schedule** means a schedule to this Undertaking.

**Separation Change Notification** has the meaning given to it in clause 7.4.

**Technical Assistance** includes advising on technical knowledge documentation, supporting the Approved Purchaser on acquiring specific assets necessary for the ongoing conduct of the Divestiture Business, providing staff with suitable experience and skills to assist and/or advise on technical issues, assisting in training for the Approved Purchaser's staff, and providing guidance on regulatory and legal aspects relating to the transfer of or application for licences.

**Third Party Consents** means any Consent from any entity that is not a government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the conduct of the Divestiture Business.

**Transferred Personnel** has the meaning given to it in clause 5.3(a).

**Undertaking** is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

**Undertaking Appointment** means the Approved Independent Manager, the Approved Independent Auditor or the Approved Divestiture Agent, as applicable.

**Unsold Business** has the meaning given to it in clause 10.1.

## **2. Interpretation**

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- 2.1** In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
- 2.1(a) a reference to this Undertaking includes all of the provisions of this document including its Schedules;
  - 2.1(b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
  - 2.1(c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
  - 2.1(d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
  - 2.1(e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
  - 2.1(f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
  - 2.1(g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
  - 2.1(h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;

- 2.1(i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- 2.1(j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- 2.1(k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- 2.1(l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- 2.1(m) material not forming part of this Undertaking may be considered to:
  - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
  - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- 2.1(n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to:
  - (i) the effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
  - (ii) the need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- 2.1(o) the ACCC may authorise the Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that

authorisation may be subject to any conditions which the ACCC may impose;

2.1(p) in performing its obligations under this Undertaking, APA will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking; and

2.1(q) a reference to:

- (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
- (ii) a party includes its successors and permitted assigns; and
- (iii) a monetary amount is in Australian dollars.

## Schedule 2 – Proposed Purchaser Notice Form

Please note in relation to information given on or in relation to this form, giving false or misleading information is a serious offence.

The completed form with requested documents attached may be provided to the ACCC using the following method:

### Email

Subject line: Proposed Purchaser Notice – APA Group section 87B Undertaking

Address: [mergers@acc.gov.au](mailto:mergers@acc.gov.au)

Attention: Executive General Manager - Mergers and Adjudication Group

With an email copy sent to:

Address: [mergersucu@acc.gov.au](mailto:mergersucu@acc.gov.au)

Attention: Director, Undertaking Compliance Unit Merger Coordination and Strategy Branch

1. In relation to the Proposed Purchaser, please provide the following information:
  - (a) Name of the Proposed Purchaser:
  - (b) Address:
  - (c) Contact name:
  - (d) Telephone number:
  - (e) Other contact details:
2. Please attach a submission containing the following information to this form:
  - (a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business.
  - (b) details of the Proposed Purchaser's experience in the relevant market/s.



- (c) the names of the owner(s) and/or the directors of the Proposed Purchaser.
- (d) a section addressing the factors set out in clauses 6.3(b) of this Undertaking, including any information adverse to the Proposed Purchaser, in the power, possession or control of APA.
- (e) details of any of the following types of relationships between APA and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:
  - (i) APA and the Proposed Purchaser are Associated Entities;
  - (ii) APA is an Entity Connected with the Proposed Purchaser;
  - (iii) the Proposed Purchaser is an Entity Connected with APA;
  - (iv) APA and the Proposed Purchaser are Related Entities;
  - (v) APA and the Proposed Purchaser are Related Parties;
  - (vi) any Related Party, Related Entity or Entity Connected with APA is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
  - (vii) APA and the Proposed Purchaser have a contractual relationship or had one within the past three years, other than those attached to this form;
  - (viii) the Proposed Purchaser is a supplier or customer of APA or has been in the past three years;
  - (ix) APA is a supplier to the Proposed Purchaser or has been in the past three years; and
  - (x) any other relationship between APA and the Proposed Purchaser that allows one to affect the business decisions of the other.

3. Please also attach to this form:

- (a) the finalised draft of the sale and purchase agreement for approval by the ACCC pursuant to clause 6.3(a) (i) (A).
- (b) the finalised draft of any technical assistance agreement, for approval by the ACCC pursuant to clause 6.3(a) (i) (B).

- (c) the finalised draft of any interim supply agreement in relation to the Proposed Purchaser, for approval by the ACCC pursuant to clause 6.3(a)(i)(C).
- (d) any documents required to support the information provided by APA pursuant to this form.

## Schedule 3 – Undertaking Appointment Form

### Proposed [Independent Manager / Auditor / Divestiture Agent / Form]

This form sets out the information required by the ACCC in relation to proposed appointment of the following positions under the Undertaking:

- Independent Manager; or
- Independent Auditor; or
- Divestiture Agent;

(the **Undertaking Appointments**).

This form is to be used for each of the above appointments.

Please note in relation to information given on in relation to this form, giving false or misleading information is a serious offence.

### Method of Delivery to the ACCC

The completed Undertaking Appointment form, along with the additional requested information is to be provided to the ACCC with the subject line (*proposed* [only include relevant Undertaking Appointment i.e. Independent Auditor/Divestiture Agent/Independent Manager] *Form* – APA section 87B Undertaking to the below email addresses:

1. [mergers@acc.gov.au](mailto:mergers@acc.gov.au)  
Attention: Executive General Manager  
Mergers and Adjudication Group
2. **With an email copy sent to:**  
[mergersucu@acc.gov.au](mailto:mergersucu@acc.gov.au)  
Attention: Director  
Undertaking Compliance Unit  
Merger Coordination and Strategy Branch

### Information Required

The ACCC requires the following information in order to assess a proposed Independent Auditor, Divestiture Agent or Independent Manager (i.e. the relevant undertaking appointment).

1. Proposed Undertaking Appointment Details:
  - (a) the name of the Proposed Undertaking Appointment; and
  - (b) the name of the proposed Undertaking Appointment's employer and contact details including:
    - Address;
    - Contact name;
    - Telephone number;
    - Other contact details.
  
2. A submission containing the following information:
  - (a) details of [Undertaking Appointment]'s qualifications and experience relevant to his or her proposed role pursuant to the Undertaking.
  - (b) the names of the [owner/s and the directors (delete any that do not apply)] of [the Undertaking Appointment's employer].
  - (c) details of any of the following types of relationships between APA and [the Undertaking Appointment] or [the Undertaking Appointment's employer] or confirmation that no such relationship exists whether within Australia or outside of Australia:
    - (i) APA and [the Undertaking Appointment's employer] are Associated Entities.
    - (ii) APA is an Entity Connected with [the Undertaking Appointment's employer].
    - (iii) [The Undertaking Appointment's employer] is an Entity Connected with APA .
    - (iv) APA and [the Undertaking Appointment's employer] are Related Entities.
    - (v) APA and [the Undertaking Appointment's employer] are Related Parties.
    - (vi) any Related Party, Related Entity or Entity Connected with APA is a Related Party, Related Entity or Entity Connected with [the Undertaking Appointment].

- (vii) APA and [the Undertaking Appointment] or [the Undertaking Appointment's employer] have a contractual relationship or had one within the past three years, other than those attached to this form.
  - (viii) [the Undertaking Appointment's employer] is a supplier or customer of APA or has been in the past three years.
  - (ix) APA is a supplier of the [the Undertaking Appointment's employer] or has been in the past three years.
  - (x) any other relationship between APA and [the Undertaking Appointment] or [the Undertaking Appointment's employer] that allows one to affect the business decisions of the other.
3. a document outlining the terms of appointment of the proposed Undertaking Appointment.

### **Specific Information required for Undertaking Appointments**

The ACCC requires the below information in relation to the relevant Undertaking Appointment.

#### **Proposed Independent Auditor**

1. The finalised draft audit plan for the Divestiture Business, drafted by the Proposed Independent Auditor and outlining (to the extent possible) the Proposed Independent Auditor's plans in regard to the establishment audit and the Audit Report.

#### **Proposed Divestiture Agent**

1. The finalised draft business sale agreement drafted by the Proposed Divestiture Agent in consultation with APA. The draft business sale agreement is to provide for the divestiture of the Unsold Business.
2. The Proposed Divestiture Agent's draft marketing and sale plan for the Unsold Business.

#### **Proposed Independent Manager**

1. The finalised draft separation and management plan for the Divestiture Business detailing the measures and timing to be implemented by APA's and the Approved Independent Manager in order to fulfil APA's and the Approved Independent Manager's obligations pursuant to this Undertaking. This plan is to be drafted by the Proposed Independent Manager in consultation with APA to achieve the objectives of the Undertaking including:

- (a) the intended mode of operation of the Divestiture Business until completion of its sale;
- (b) separation measures to ensure the Divestiture Business is operated in a manner which is financially and operationally separate from APA, including the:
  - (i) separation of the books and records of the Divestiture Business from those of APA;
  - (ii) severance of the Divestiture Business's participation in any private shared information technology networks, to the extent possible without compromising the viability of the Divestiture Business;
  - (iii) implementation of specific electronic, information and physical security measures to maintain the confidentiality of any competitively sensitive information of the Divestiture Business; and
  - (iv) severance of arrangements to share personnel and plant between the Divestiture Business and the businesses to be retained by APA, to the extent possible without compromising the viability of the Divestiture Business;
- (c) details of contracts for the provision of goods or services to the Divestiture Business which will expire after the completion of the sale of the Divestiture Business to the Approved Purchaser and the actions which will be taken to ensure they are replaced on commercial terms favourable to the Divestiture Business;
- (d) details of contracts for the provision of goods or services by the Divestiture Business which will expire after the completion of the sale of the Divestiture Business to the Approved Purchaser, and the actions which will be taken to ensure they are renewed or renegotiated on commercial terms favourable to the Divestiture Business; personnel planning to maintain appropriate personnel levels and ensure that the Divestiture Business has access to all personnel necessary to operate the Divestiture Business
- (e) any Material Changes to the Divestiture Business required in order to fulfil APA's and the Approved Independent Manager's obligations pursuant to the Undertaking;
- (f) the cooperation required from the Independent Manager with APA in relation to the divestiture of the Divestiture Business, including:

- (i) the method by which due diligence information, site visits and personnel interviews by and to prospective purchasers of the Divestiture Business will be managed; and
  - (ii) the method by which the Independent Manager and APA will preserve the confidentiality of the Divestiture Business's competitively sensitive information from APA and its advisers throughout this process.
- (g) a protocol whereby the Approved Independent Manager can provide any information requested by APA without disclosing the details of the Divestiture Business's competitively sensitive information to APA.

**Schedule 4 – Confidential Clauses**

1



## Schedule 5 – Divestiture Business

### 1 The Divestiture Business

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1.1 The Divestiture Business means either:

- (a) all the shares (free of encumbrances) in Epic SA (including assets owned by Epic SA to the extent they are MAPS Assets) and any MAPS Assets to the extent that they are not owned by Epic SA; or
- (b) all the MAPS Assets.

### 2 The MAPS Assets

---

2.1 The “MAPS Assets” means all the assets required to operate, or to facilitate the operation of, MAPS as a stand-alone, competitively viable, long term business, including the assets described by category below:

- (a) Pipeline Assets (refer map in Appendix 1), see clause 3 below;
- (b) Real Property, see clause 4 below;
- (c) Business Contracts , see clause 5 below;
- (d) Systems, see clause 6 below;
- (e) Records and MAPS IP, see clause 7 below;
- (f) Plant and equipment, see clause 8 below;
- (g) Employees, see clause 9 below;
- (h) statutory licences, see clause 10 below;
- (i) Assignable equipment warranties, see clause 11 below;
- (j) Working capital, see clause 12 below;
- (k) Securities, see clause 13 below,

but does not include Excluded Assets and Liabilities.

2.2 The assets in categories 2.1(b) – 2.1(k) above are described in general terms and the specific assets in each category must be set out in the Approved Business Sale Agreement.

- 2.3 To avoid doubt, APA must procure that all companies comprising the Epic Holdings Group transfer MAPS Assets owned by them to the Approved Purchaser.

### 3 Pipeline Assets

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- 3.1 The pipeline and related assets described in 'South Australian Pipeline Licence 1'. A detailed summary is provided in Appendix 2 and the key pipeline assets are described below:
- (a) the 781 kilometre mainline from the Cooper Basin production facilities to Adelaide;
  - (b) associated laterals and looping including the Wasleys to Adelaide Loop Line, Peterborough Lateral, Port Pirie Lateral, Burra Lateral, Mintaro Lateral, Angaston Lateral, Pelican Point Lateral, Amcor Lateral, Osborne Lateral, Dry Creek Lateral, Taperoo Lateral, Port Bonython Lateral, Whyalla Lateral, Nurooppta Lateral, Whyalla Lateral Loop, Quarantine Lateral, Tarac Lateral and Hallett Lateral;
  - (c) associated compressor stations installed on the mainline and two compressors installed on the lateral pipelines located at Whyte Yarcowie and Wasleys;
  - (d) associated mainline valve installations;
  - (e) associated Epic SA owned meter stations; and
  - (f) existing SCADA and communication system directly related to MAPS.

### 4 Real Property

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- 4.1 All freehold or leasehold land solely related to the ownership or operation of the Divestiture Business, including depots.
- 4.2 All easements, licences or land access rights solely related to the ownership and operation of Divestiture Business.
- 4.3 Rented premises in which any control centre that relates to MAPS is located.
- 4.4 To the extent that any real property relates to both the Divestiture Business and other pipelines owned by the Epic Holdings Group at the Control Date other than the Pipeline Assets (**Other Epic Assets**) and that

real property is required for the ownership or operation of, or to facilitate the operation of, the Divestiture Business, then:

- (a) if the real property primarily relates to the Divestiture Business, the real property will be a MAPS Asset but the Approved Purchaser must provide the relevant access or enjoyment rights (including by way of lease or easement) to APA in so far as it relates to the Other Epic Assets;
- (b) if the real property primarily relates to the Other Epic Assets, the real property will not be a MAPS Asset but APA must provide the relevant access or enjoyment rights (including by way of lease or easement) to the Approved Purchaser in so far as it relates to MAPS.

## **5 Business Contracts**

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- 5.1** All gas transportation and other agreements under which any member of the Epic Holdings Group provides services on MAPS to a person or entity that is not a member of that group, including gas transportation agreements with Origin Energy, AGL, International Power, OneSteel and Adelaide Brighton Cement.
- 5.2** All connection agreements regulating connection of customers to the Pipeline Assets.
- 5.3** Operation and Maintenance (O&M) agreement with the Cooper Basin Joint Venture in relation to the Port Bonython pipeline. (The Moomba Port Bonython Liquids Line conveys oil and natural gas liquids from Moomba plant at the Cooper Basin to Port Bonython terminal at Stoney Point. The pipeline is owned by the South Australian Cooper Basin Joint Venture and is operated and maintained under contract by Epic SA).
- 5.4** Other O & M agreements such as the Beverly pipeline, and the Origin Energy owned interconnect at Moomba.
- 5.5** Any other contracts which relate solely to the ownership or operation of the Pipeline Assets, including consulting contracts, equipment leases, services and supply contracts and procurement contracts.
- 5.6** To the extent that any contract relates to both the Divestiture Business and Other Epic Assets and the goods or services provided under contract is required for the ownership or operation of, or to facilitate the operation of, the Divestiture Business, then:

- (a) if the contract primarily relates to the Divestiture Business, the contract will be a Business Contract but the Approved Purchaser will pass through the benefit and burden of the contract to APA in so far as it relates to the Other Epic Assets;
- (b) if the contract primarily relates to Other Epic Assets, APA will pass through the benefit and burden of the contract to the Approved Purchaser in so far as it relates to the Divestiture Business.

## **6 Systems**

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- 6.1** The existing IT and/or communication systems within any control centre related to MAPS including in Collins Street, Melbourne required to operate, or to facilitate the operation of, the Divestiture Business.
- 6.2** Any IT and/or communication systems and servers solely related to the ownership or operation of the Divestiture Business and related equipment including computers, printers, fax machines and telephones.
- 6.3** Databases related to the Divestiture Business.
- 6.4** To the extent that any IT and/or communication systems or servers relate to both the Divestiture Business and Other Epic Assets, APA must either provide duplicate IT systems or servers or agree transitional services arrangements with the Approved Purchaser under the Approved Interim Supply Agreement.

## **7 Records and MAPS IP**

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- 7.1** All business records (including books, files, reports, records, correspondence, documents and other material) and intellectual property primarily related to, or required for, the ownership and operation of, or required to facilitate the operation of, the Divestiture Business, including:
  - (a) accounting information and records;
  - (b) direct and indirect tax records;
  - (c) business plans and forecasts;
  - (d) MAPS customer information and data;
  - (e) operating and equipment manuals and procedures;

- (f) environmental legislation compliance records;
- (g) gas safety cases;
- (h) disaster recovery plans;
- (i) Emergency Response Manual and other safety and risk management plans;
- (j) Easement Land owner easement and history; and
- (k) maintenance information and records.

**7.2** All records are to be originals to the extent possible.

**7.3** To the extent that any records relates to both the Divestiture Business and Other Epic Assets, then APA will provide copies of those records to the extent they relate to the Divestiture Business to the Approved Purchaser.

**7.4** To the extent that any intellectual property is required for both the Divestiture Business and Other Epic Assets, then APA will grant the Approved Purchaser an irrevocable, royalty free and perpetual licence to use that intellectual property.

## **8 Plant and equipment**

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**8.1** At the option of the Approved Purchaser, spare parts, inventory, plant and equipment, vehicles and office equipment and furniture (desks, tables, chairs, shelves, etc) related to the Divestiture Business, excluding any such assets that are solely related to Other Pipeline Assets.

## **9 Personnel**

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**9.1** The relevant personnel under clause 5.3 of this Undertaking.

## **10 Statutory licences**

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**10.1** All licences, approvals, consents, rights, registrations, permits, certificates and other authorisations relating to the Divestiture Business issued or given by any government authority, the key one being 'PL 1'.

## **11 Assignable equipment warranties**

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- 11.1** Any warranty, performance guarantee or similar right enjoyed by the Epic Holdings Group in relation to the Divestiture Business to the extent assignable to the Approved Purchaser and if not assignable, APA must procure the pass through of the benefit of the equipment warranty to the extent reasonably possible.

## **12 Working capital**

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- 12.1** Trade and other receivables and debts and amounts owing in relation to the Divestiture Business at the time of completion of the divestiture.

## **13 Securities**

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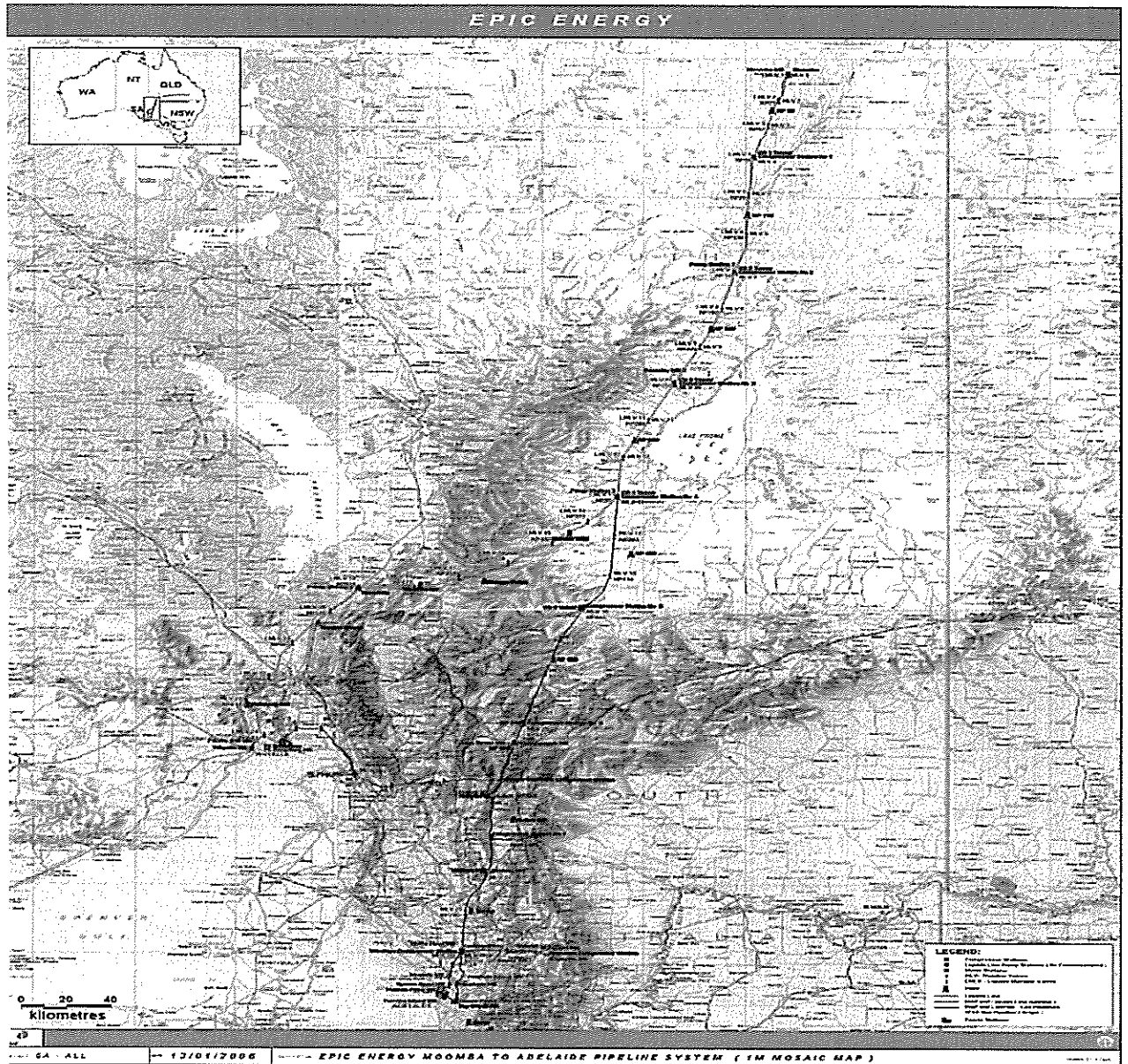
- 13.1** Any bonds, bank guarantees, letters of credit or similar credit support instruments in favour of the Epic Holdings Group and which are provided under a Business Contract (as set out in section 5 of this Schedule 5).

## **14 Excluded Assets and Liabilities**

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- 14.1** Cash on hand.
- 14.2** Subject to the terms of this Undertaking, assets owned by third parties.
- 14.3** Records not relating to, or required by, the Divestiture Business.
- 14.4** Insurance policies.
- 14.5** Bank debt.
- 14.6** South East Pipeline ('SEP'): The SEP is a pipeline which delivers gas to Snuggery and Mount Gambier via the APA owned SESA Pipeline. The Epic Holdings Group includes the financial results within the Divestiture Business financial results, likely for convenience as the estimated revenue is only ~\$1m p.a. For the avoidance of doubt, SEP is not a required asset for the Divestiture Business. This includes Pipeline Licences 3 and 4.

Appendix 1 – Map of the Moomba to Adelaide Pipeline System<sup>1</sup>



<sup>1</sup> Department for Manufacturing, Innovation, Trade, Resources and Energy, Pipeline Licence 1, 2011 Annual Report.

Appendix 2 – Indicative Moomba to Adelaide pipeline data (based on public information on PL 1)<sup>2</sup>

Date Constructed	1967 / 68
Date Commissioned	1969
Length	781km
External Diameter	559mm
Wall Thickness:-	
- Normal	7.92 mm
- Special Crossings (rivers, roads etc.)	9.50mm
- MLV	9.50mm
Pipe Grade	API 5L X52
MAOP	
Moomba - KP731	Voluntary reduction to 6500 kPa
KP731 – Torrens Island	Voluntary reduction to 6100 kPa
Coating	Plicollex Tape
Depth of cover	Nominal 750 mm 1200mm at road, rail and creek crossings
Main Line Valves	Cameron Ball valves (30 in total)
Actuators (Remote activation)	Shafer gas over oil valve actuators(11 in total)
Actuators (Local activation)	19 Manual gear type operators
Fluid	Natural Gas
Mainline Compressor & scraper stations	7 compressor stations installed on mainline. Each site has two gas turbine powered centrifugal compressor packages.
Lateral compressor stations	2 compressor units installed on the lateral pipelines located at Whyte Yarcowie and Wasleys
Meter Stations	29
Corrosion Protection	Impressed current CP system 116 transformer rectifier units installed
SCADA system	Digital microwave link from Moomba to Adelaide with VHF radio coverage for voice communication

1.1

<sup>2</sup> Department for Manufacturing, Innovation, Trade, Resources and Energy, Pipeline Licence 1, 2011 Annual Report.



### Appendix III – Laterals and Looping on mainline<sup>3</sup>

Item	A	B	C	D	E	F	G	H	I
Date Constructed	2000	1986	1972	1975-1976	1974	1984	1969	2000	2001
Date Commissioned	2000	1986	1972	1976	1974	1984	1969	2000	2002
Length (Kms)	CS1 5.2 km, CS2 10 km, CS3 13.3 km, CS 4.5 km ( Total 34.4 km)	42	1.9	77.8	15	5.5	39.7	River – 0.855 km, Land – 1.007 Km	114.3
External Diameter (mm)	600	508	88.9	168.3	88.9	219.1	219	356	219
Fluid	Natural Gas	Natural Gas	Natural Gas	Natural Gas	Natural Gas	Natural Gas	Natural Gas	Natural Gas	Natural Gas
Wall Thickness (mm)	Loops 1 to 3 – 7.14, Loop 4 – 8.74	9.0	4.78	4.37	4.78	4.77	4.78	7.1	4.00 & 4.78
Pipe Grade	API 5L X65	API 5L X60	ASTM A53 Gr B	ASTM A53 Gr B	ASTM A53 Gr B	API 5L X42	API 5L X42	API 5L X52	API 5L X42
MAOP (Kpa)	Loops 1 to 3 7322, Loop 4 8740	7322	690	8240	7322	7322	7322	9600	9930
Coating	FBE	FBE	Armature	Picoflex PVC	Yellow Jacket	FBE	Picoflex PVC	River – 400 micron, FBE plus powercrete, Land – 400 micron	Yellow jacket
Main Line Valves		6		3			1		1
Actuators (Remote activation)		4							
Actuators (Local activation)		Two manual gear type actuators							
Compressor stations		1 (Wasley)		1 (Whyte Yarowie)					
Meter Stations		5	1	1	1	1	3	1	1

Key:  
A – Main pipeline loop sections  
B – Wasley to Adelaide Loop Line  
C – Peterborough Lateral  
D – Port Pirie Lateral  
E – Burra Lateral  
F – Mintaro Lateral  
G – Angaston Lateral  
H – Pelican Point Lateral  
I – Amcor Lateral

Item	J	K	L	M	N	O	P	Q	R	S
Date Constructed	1998	1970-71	1969	1988-1989	1988-1989	1972	1988-1989	2001	1972	2001
Date Commissioned	1998	1971	1969	1989	1989	1972	1989	2002	1972	2001
Length (Kms)	River – 0.852, Land 1- 1.31, Land 2 – 0.188	1.3	1.2	5.5	87.8	1.6	11.5	0.14	0.95	0.74
External Diameter (mm)	River – 273.1, Land 1- 273.1, Land 2 – 219.1	323.9	323.9	114.3	219.1	114.3	114.3	219	89	219
Fluid	Natural Gas	Natural Gas	Natural Gas	Natural Gas	Natural Gas	Natural Gas	Natural Gas	Natural Gas	Natural Gas	Natural Gas
Wall Thickness (mm)	River – 6.4, Land 1- 9.2, Land 2 – 4.0	9.53	9.53	4.1 to KP 5.43, 4.8 KP 5.43 to Port Bonython	4.3	4.78	4.3	6.2	4.78	6.2
Pipe Grade	API 5L X42	API 5L X42	API 5L X42	API 5L X42	API 5L X52	ASTM A53 Gr B	API 5L X52	API 5L X42	ASTM A53 Gr B	API 5L X42
MAOP (Kpa)	10000	2067	7322	7322	10130	1379	10130	7322	1379	7322
Coating	River FBE concrete coated, Land Yellow Jacket	Yellow Jacket	Double wrap coal tar epoxy concrete coated	Polyken 2 layer tape	Polyken 2 layer tape	Armature	Polyken 2 layer tape 25 mm concrete coating at crossings	Yellow jacket	Armature	Yellow jacket
Main Line Valves					4				1	1
Actuators (Remote activation)										
Actuators (Local activation)										
Compressor stations										
Meter Stations	1	2	1	1	3	1		1		1

Key:  
J – Osborne Lateral  
K – Dry Creek Lateral  
L – Taperoo Lateral  
M – Port Bonython Lateral  
N – Whyalla Lateral  
O – Nurooppta Lateral  
P – Whyalla Lateral Loop  
Q – Curranline Lateral  
R – Tarac Lateral  
S – Hallett Lateral

<sup>3</sup> Department for Manufacturing, Innovation, Trade, Resources and Energy, Pipeline Licence 1, 2011 Annual Report.