

Monday, 23 August 2021

The Manager
Company Announcements
Australian Stock Exchange Limited
20 Bridge Street
SYDNEY NSW 2000

Dear Sir / Madam

**SPARK INFRASTRUCTURE ENTERS INTO SCHEME IMPLEMENTATION DEED
WITH CONSORTIUM OF KKR, ONTARIO TEACHERS' AND PSP INVESTMENTS**

Please find attached Spark Infrastructure's announcement relating to its entry into a Scheme Implementation Deed with a consortium comprising Kohlberg Kravis Roberts & Co. L.P., Ontario Teachers' Pension Plan Board and the Public Sector Pension Investment Board.

The announcement is authorised for release by the Board of Directors of Spark Infrastructure.

Yours sincerely,



Jenny Faulkner
General Counsel and Company Secretary

23 August 2021**SPARK INFRASTRUCTURE ENTERS INTO SCHEME IMPLEMENTATION DEED
WITH CONSORTIUM OF KKR, ONTARIO TEACHERS' AND PSP INVESTMENTS****Highlights**

- Spark Infrastructure has agreed terms of a binding offer ("the Offer") from KKR, Ontario Teachers' and PSP Investments (together "the Consortium"), in which the Consortium will acquire all of the units in the Spark Infrastructure Trust by means of a Trust Scheme and all of the loan notes issued by Spark RE by means of a Creditors' Scheme.
- The Offer (based on \$2.95 per stapled security, i.e. before payment of the interim distribution of 6.25 cents per stapled security ("cps")) values Spark Infrastructure at an equity value of \$5.2 billion and an enterprise value of \$10.1 billion.
- Spark Infrastructure securityholders¹ will receive total value of \$2.95 cash per stapled security before franking credits, plus additional consideration if the Schemes have not been implemented by 15 February 2022.
- The total value of \$2.95 cash per stapled security comprises:
 - i. cash consideration from the Consortium of approximately \$2.7675 per stapled security, plus
 - ii. Spark Infrastructure's interim distribution for 2021 of 6.25 cps², plus
 - iii. a franked special distribution expected to be approximately 12.00 cps³.
- The special distribution will be franked to the fullest extent possible, which will provide certain Spark Infrastructure securityholders⁴ who can utilise the full benefit of franking credits with an additional benefit of approximately 5.00 cps. Spark Infrastructure's interim distribution for 2021 is also expected to carry franking credits of approximately 1.5 cps.
- The Board of Directors of Spark Infrastructure unanimously recommends that Securityholders vote in favour of the Schemes at the scheme meetings, in the absence of a Superior Proposal and subject to an independent expert concluding in the independent expert's report (and continuing to conclude) that the Schemes are in the best interests of Spark Infrastructure securityholders.
- The Schemes are subject to approval by Spark Infrastructure securityholders at Scheme meetings which are expected to be held by the end of 2021.
- If the Schemes have not been implemented by 15 February 2022, Spark Infrastructure securityholders will be entitled to additional cash consideration of 1.00 cps on 15 February 2022 and approximately 1.00 cps⁵ per month thereafter, calculated daily, from that date until implementation.

¹ Subject to being on the Spark Infrastructure register on the relevant record date.

² In order to receive the interim distribution for 2021, Securityholders must have been on the register on the distribution record date of 8 July 2021. The interim distribution is payable on 15 September 2021.

³ If the Schemes are implemented after 31 December 2021, the amount of the special distribution will be adjusted for the Final Distribution for 2021.

⁴ The ability of Spark Infrastructure securityholders to benefit from franking credits depends on their individual tax circumstances, including their tax residency and marginal tax rate.

⁵ The additional cash consideration daily rate is \$0.0003333 per day for the period after 15 February 2022.

Transaction Update

Spark Infrastructure RE Limited (ACN 114 940 984) (in its capacity as responsible entity of Spark Infrastructure Trust (ARSN 116 870 725)) ("Spark Infrastructure") announces that it has entered into a Scheme Implementation Deed ("SID") with an entity owned by Kohlberg Kravis Roberts & Co. L.P. ("KKR"), on behalf of certain of its affiliate infrastructure investment funds, vehicles and entities managed and/or advised by it or its affiliates, Ontario Teachers' Pension Plan Board ("Ontario Teachers") and Public Sector Pension Investment Board ("PSP Investments"), together the Consortium.

Background

On 15 July 2021, Spark Infrastructure announced that it had received two conditional and non-binding proposals from the Consortium⁶ to acquire all of the ordinary stapled securities in Spark Infrastructure by way of a scheme. The proposals included an initial proposal ("Initial Proposal") for all cash consideration of \$2.70 per stapled security, to be reduced to the extent that Spark Infrastructure pays or declares a distribution to its Securityholders prior to the implementation of the proposed transaction, and a subsequent revised proposal ("Revised Proposal") for all cash consideration of \$2.80 per stapled security on the same basis as the Initial Proposal. Spark Infrastructure had already announced on 1 July 2021 an interim distribution for 2021 of 6.25 cps payable on 15 September 2021, hence the implied consideration under each of the Initial Proposal and the Revised Proposal was \$2.6375 per stapled security and \$2.7375 per stapled security respectively.

On 28 July 2021 Spark Infrastructure announced that it had received a further revised proposal ("Further Revised Proposal") from the Consortium for all cash consideration of \$2.95 per stapled security, to be reduced to the extent that Spark Infrastructure pays or declares a distribution to its Securityholders prior to the implementation of the proposed transaction. The implied consideration under the Further Revised Proposal was \$2.8875 per stapled security.

The Further Revised Proposal was received following the provision of limited information regarding Spark Infrastructure's business and its prospects by Spark Infrastructure to the Consortium after the signing of a Confidentiality Agreement. Following careful consideration, and consultation with its advisers, the Board of Spark Infrastructure considered that it was in the interests of Spark Infrastructure's securityholders to engage further with the Consortium, and agreed to provide the Consortium with the opportunity to conduct due diligence on a non-exclusive basis.

The Consortium has completed due diligence and Spark Infrastructure has now entered into a Scheme Implementation Deed ("SID") with the Consortium.

Overview of the Schemes

Under the SID, it is proposed that the Consortium will acquire all of the units in the Spark Infrastructure Trust by means of a Trust Scheme (the "Trust Scheme") and all of the loan notes issued by Spark RE by means of a Creditors' Scheme (the "Creditors' Scheme"), together the Schemes (the "Schemes").

If the Schemes are implemented, Spark Infrastructure securityholders can receive a total value of \$2.95 cash per stapled security, comprising cash consideration from the Consortium of approximately \$2.7675 per stapled security, Spark Infrastructure's interim distribution for 2021 of 6.25 cps⁷, plus a franked special distribution expected to be approximately 12.00 cps⁸.

⁶ On 10 August 2021 it was announced that PSP Investments had joined the previous consortium of KKR and OTPP.

⁷ In order to receive the interim distribution for 2021, Securityholders must have been on the register on the distribution record date of 8 July 2021. The interim distribution is payable on 15 September 2021.

⁸ If the Schemes are implemented after 31 December 2021, the amount of the special distribution will be adjusted for the Final Distribution for 2021.

After payment of the interim distribution for 2021 of 6.25 cps in September 2021, the total value to be paid to Spark Infrastructure securityholders under the Schemes will be \$2.8875 per stapled security which represents:

- an increase of \$0.25 per stapled security (approximately 9.5%) to the implied price offered under the Initial Proposal from the Consortium of \$2.6375 per stapled security;
- a 26% premium to the closing price of \$2.30 per stapled security on 13 July 2021, being the date prior to Spark Infrastructure's securities being placed in trading halt on 14 July 2021 pending Spark Infrastructure's announcement on 15 July 2021; and
- a 31% premium to the three month volume weighted average price ("VWAP") up to and including 13 July 2021 of \$2.20 per stapled security.

Under the SID, Spark Infrastructure is permitted to pay a special distribution expected to be approximately 12.00 cps, franked to the fullest extent possible.⁹ This will provide certain Spark Infrastructure securityholders¹⁰ who can utilise the full benefit of franking credits with an additional benefit of approximately 5.00 cps. To the extent that the special distribution is paid, the consideration to be received under the Schemes will be reduced by the cash amount of the special distribution. The quantum of the special distribution will depend upon the availability of franking credits and may be less than the amount currently expected.

Assuming the special distribution is approximately 12.00 cps fully franked, inclusive of 5.00 cps of franking credits, certain eligible Spark Infrastructure securityholders who can utilise the full benefit of available franking credits would potentially receive a total value under the Schemes of approximately \$2.9375 per security (not including the interim distribution for 2021 of 6.25 cps which is expected to also have franking credits of approximately 1.5 cps attached).

Further consideration in the event of delays

The Offer is subject to a number of conditions which may delay the intended Scheme meetings which are expected to be held by the end of 2021.

If the Schemes have not been implemented by 15 February 2022, Spark Infrastructure securityholders will be entitled to additional cash consideration of 1.00 cps on 15 February 2022 and a further \$0.0003333 per stapled security (approximately 1.00 cps per month) for every day thereafter up to the date of implementation.¹¹

Spark Infrastructure Board unanimously recommends the Schemes

The Board of Directors of Spark Infrastructure unanimously recommends that Securityholders vote in favour of the Schemes at the scheme meetings, in the absence of a Superior Proposal and subject to an independent expert concluding in the independent expert's report (and continuing to conclude) that the Schemes are in the best interests of Spark Infrastructure securityholders. Subject to the same qualifications, each Spark Infrastructure Board member intends to vote, or procure the voting of, any Spark Infrastructure stapled securities held or controlled by them in favour of the Schemes.

Spark Infrastructure Chair Doug McTaggart said: "The Spark Infrastructure Board unanimously recommends Securityholders vote in favour of the Schemes in the absence of a superior proposal and subject to the independent expert concluding and continuing to conclude that the Schemes are in the best interests of Spark Infrastructure securityholders. The Board and management have engaged

⁹ If the Schemes are implemented after 31 December 2021, the amount of the special distribution will be adjusted for the Final Distribution for 2021.

¹⁰ The ability of Spark Infrastructure securityholders to benefit from franking credits depends on their individual tax circumstances, including their tax residency and marginal tax rate.

¹¹ But no later than up to the end date for the SID of 24 May 2022 (unless the parties agree an extension).

constructively with the Consortium over several months to secure additional value beyond the initial approach. The Board believes that the agreed Scheme value appropriately reflects the scarcity value of Spark Infrastructure's Tier One assets and their reliable and inflation-linked operating cashflows, our attractive pipeline of growth projects and the important future role our businesses will play in the decarbonising of Australia's electricity grid."

Spark Infrastructure Managing Director Rick Francis said: "Spark Infrastructure's businesses will continue to play a critical role in the transformation of Australia's energy sector. The investments we have made in distribution, transmission and renewables put Spark Infrastructure front and centre of Australia's low-emissions energy future. We are pleased this has been recognised in the Scheme consideration agreed with the Consortium."

The Consortium said: "We are excited to invest in Spark Infrastructure's leading portfolio of electricity networks and help to advance its mission to provide essential energy infrastructure to the millions of customers across Australia that rely on Spark Infrastructure's assets. The Consortium takes its role as a steward of critical infrastructure seriously and we look forward to working with our partners and stakeholders to support Australia's energy transition and decarbonisation efforts."

Details of the SID

The Schemes are subject to various conditions. A copy of the SID, which sets out the terms and conditions of the Schemes and associated matters, is attached to this announcement. Capitalised terms used in this section below have the meaning given to those terms in the SID.

In summary, conditions for implementation of the Schemes, include:

- approval of Australia's Foreign Investment Review Board ("FIRB");
- the Consortium obtaining foreign merger clearances;
- approval of Spark Infrastructure securityholders;
- the Independent Expert issues an Independent Expert's Report which concludes that the Schemes are in the best interests of the Spark Infrastructure securityholders;
- approval of the Creditor's Scheme by the Court;
- no Spark Infrastructure Prescribed Occurrence or Material Adverse Change occurring; and
- other customary conditions.

Under the SID, Spark Infrastructure is subject to customary exclusivity obligations, including "no shop", "no talk" (subject to customary fiduciary exceptions) and notification obligations. The SID also contains a matching right regime in respect of any Superior Proposal received by Spark Infrastructure. The SID also details circumstances under which a Reimbursement Fee of \$52 million may be payable by Spark Infrastructure to the Consortium, or a Reverse Reimbursement Fee of \$52 million may be payable by the Consortium to Spark Infrastructure, in certain circumstances.

Indicative timetable and next steps

A Scheme booklet, which will contain important information relating to the Schemes and the Scheme meetings, the reasons for the Spark Infrastructure Board recommendation, and the Independent Expert's Report, is currently expected to be sent to securityholders in Quarter 4, 2021.

The Schemes are subject to approval by Spark Infrastructure securityholders at the Scheme meetings which are currently expected to be held by the end of 2021.

Spark Infrastructure is being advised by Goldman Sachs and Herbert Smith Freehills.

Spark Infrastructure makes this statement, and will continue to keep the market informed, in accordance with its continuous disclosure obligations. In the interim, Securityholders do not need to take any action at the present time.

This announcement is authorised for release by the Board of Directors of Spark Infrastructure.

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About KKR

KKR is a leading global investment firm that offers alternative asset management and capital markets and insurance solutions. KKR aims to generate attractive investment returns by following a patient and disciplined investment approach, employing world-class people, and supporting growth in its portfolio companies and communities. KKR sponsors investment funds that invest in private equity, credit and real assets and has strategic partners that manage hedge funds. KKR's insurance subsidiaries offer retirement, life and reinsurance products under the management of The Global Atlantic Financial Group. References to KKR's investments may include the activities of its sponsored funds and insurance subsidiaries. For additional information about KKR & Co. Inc. (NYSE: KKR), please visit KKR's website at www.kkr.com and on Twitter @KKR_Co.

About Ontario Teachers' Pension Plan Board

Ontario Teachers' Pension Plan Board (Ontario Teachers') is the administrator of Canada's largest single-profession pension plan, with C\$221.2 billion in net assets (all figures at December 31, 2020). It holds a diverse global portfolio of assets, approximately 80% of which is managed in-house, and has earned an annual total-fund net return of 9.6% since the plan's founding in 1990. Ontario Teachers' is an independent organization headquartered in Toronto. Its Asia-Pacific region offices are located in Hong Kong and Singapore, and its Europe, Middle East & Africa region office is in London. The defined-benefit plan, which is fully funded, invests and administers the pensions of the province of Ontario's 331,000 active and retired teachers. For more information, visit otpp.com and follow us on Twitter @Otpplnfo.

About PSP Investments

The Public Sector Pension Investment Board (PSP Investments) is one of Canada's largest pension investment managers with \$204.5 billion of net assets under management as of March 31, 2021. It manages a diversified global portfolio composed of investments in public financial markets, private equity, real estate, infrastructure, natural resources and credit investments. Established in 1999, PSP Investments manages and invests amounts transferred to it by the Government of Canada for the pension plans of the federal Public Service, the Canadian Forces, the Royal Canadian Mounted Police and the Reserve Force. Headquartered in Ottawa, PSP Investments has its principal business office in Montréal and offices in New York, London and Hong Kong. For more information, visit investpsp.com or follow us on Twitter and LinkedIn.

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Deed

Scheme implementation deed

Pika Bidco Pty Ltd

Spark Infrastructure RE Limited as responsible
entity of the Spark Infrastructure Trust



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Scheme implementation deed

Date ► 23 August 2021

Between the parties

Consortium Sub **Pika Bidco Pty Ltd**
ACN 652 787 258
of c/- TMF Corporate Services (Aust) Pty Limited, Level 16, 201
Elizabeth Street, Sydney, NSW 2000

Spark RE **Spark Infrastructure RE Limited**
ACN 114 940 984
as responsible entity of the **Spark Infrastructure Trust**
ARSN 116 870 725
of Level 29, 225 George Street, Sydney NSW 2000
(**Spark RE**)

Recitals

- 1 The parties have agreed that the Consortium Sub will acquire:
 - all of the units in the Spark Infrastructure Trust by means of the Trust Scheme;
 - all of the loan notes issued by Spark RE by means of the Creditors' Scheme; and
 - all of the A class shares in Spark Infrastructure Holdings No. 1 Pty Ltd, Spark Infrastructure Holdings No. 2 Pty Ltd and Spark Infrastructure Holdings No. 3 Pty Ltd.
- 2 The parties have agreed to implement the Schemes on the terms and conditions of this deed.

This deed witnesses as follows:



1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this deed are set out in Schedule 2.

1.2 Interpretation

Schedule 2 contains interpretation rules for this deed.

1.3 Deed components

This deed includes any schedule.

2 Agreement to proceed with the Transaction

- (a) Spark RE agrees to propose the Schemes on and subject to the terms and conditions of this deed.
- (b) The Consortium Sub agrees to assist Spark RE to propose the Schemes on and subject to the terms and conditions of this deed.
- (c) Spark RE and the Consortium Sub agree to implement the Schemes and Related Steps on and subject to the terms and conditions of this deed.

3 Conditions Precedent and pre-implementation steps

3.1 Conditions Precedent

Subject to this clause 3, the Schemes will not become Effective, and the respective obligations of the parties in relation to the implementation of the Schemes are not binding, until each of the following Conditions Precedent is satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) **FIRB:** before 8:00am on the Second Court Date one of the following has occurred:
 - (1) Consortium Sub has received written notice under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**), by or on behalf of the Treasurer of the Commonwealth of Australia (**Treasurer**), advising to the effect that that the Commonwealth Government has no objections to the Transaction and related actions, either unconditionally (other than the Standard Tax Conditions) or on terms that are acceptable to the Consortium Sub acting reasonably including having regard to conditions imposed in respect of other transactions involving the same or similar asset classes. For the avoidance of doubt, the parties agree that the Consortium Sub will be acting reasonably in determining that any condition imposed in connection



with minimum Australian equity requirements for Consortium Sub is not acceptable to it;

- (2) the Treasurer becomes precluded by the passage of time from making an order or decision under Part 3 of the FATA in relation to the Transaction and the Transaction is not prohibited by section 82 of the FATA; or
- (3) where an interim order is made under section 68 of the FATA in respect of the Transaction, the subsequent period for making an order or decision under Part 3 of the FATA elapses without the Treasurer making such an order or decision,

and for these purposes the **Standard Tax Conditions** means the 'Standard' Tax Conditions set out in Section D of FIRB Guidance Note 12 – Tax Conditions (as last updated on 9 July 2021) available at <http://www.firb.gov.au> under 'General Guidance / Guidance notes';

- (b) **PRC Regulatory Approvals:** before 8.00am on the Second Court Date the State Administration for Market Regulation of China issues a formal approval notice (or is deemed to have granted approval) under the merger control rules of the Anti-Monopoly Law of China with respect to the Transaction and the Consortium Arrangements;
- (c) **Israeli Act Approval:** before 8.00am on the Second Court Date:
 - (1) all required filings have been made under the merger control provisions of the Economic Competition Law, 5748-1988 (the **Israeli Act**); and
 - (2) the unconditional written approval of the General Director of the Israeli Competition Authority (the **General Director**) with respect to the Transaction has been received (and has not expired), or the written approval of the General Director has been received (and has not expired) and clearance is subject to conditions acceptable to the Consortium Sub, or the applicable waiting periods under the Israeli Act have expired, or a letter of the Israeli Competition Authority exempting the parties from filing merger notifications with the General Director has been received;
- (d) **ASIC/ASX Relief:** ASIC and ASX issue or provide such consents, waivers and approvals and do such other acts that are necessary to implement the Schemes and none of those consents, waivers or approvals has been withdrawn, revoked or adversely amended before 8.00am on the Second Court Date;
- (e) **Securityholder approval:**
 - (1) Spark Securityholders (other than Excluded Securityholders) approve the Trust Scheme Resolutions at the Trust Scheme Meeting by the requisite majorities under section 601GC(1) and item 7 of section 611 of the Corporations Act; and
 - (2) Spark Securityholders (other than Excluded Securityholders) approve the Creditors' Scheme at the Creditors' Scheme Meeting by the requisite majorities under subparagraph 411(4)(a)(i) of the Corporations Act;
- (f) **Independent Expert:** the Independent Expert:
 - (1) issues an Independent Expert's Report which concludes that the Schemes are in the best interests of the Spark Securityholders as at the date of the Independent Expert's Report; and



- (2) does not change its conclusion or withdraw its Independent Expert's Report before 8.00am on the Second Court Date;
- (g) **Court approval:** the Court approves the Creditors' Scheme in accordance with paragraph 411(4)(b) of the Corporations Act and the Court grants the Second Judicial Advice;
- (h) **Restraints:** there is not in effect any temporary, preliminary or final restraining order, injunction, or other order issued by any court of competent jurisdiction or Government Agency that would prevent, make illegal or delay the Schemes at 8.00am on the Second Court Date;
- (i) **No Spark Prescribed Occurrence:** no Spark Prescribed Occurrence occurs between (and including) the date of this deed and 8.00am on the Second Court Date;
- (j) **No Spark Material Adverse Change:** no Spark Material Adverse Change occurs, is announced or otherwise becomes known to the Consortium Sub, between (and including) the date of this deed and 8.00am on the Second Court Date; and
- (k) **Spark Representations and Warranties:** the Spark Representations and Warranties are true and correct in all material respects as at 8.00am on the Second Court Date as though made on and as of that time, except to the extent any such representation or warranty expressly relates to an earlier date.

3.2 Satisfaction of Conditions Precedent

- (a) Spark RE must, to the extent it is within its power to do so, use all reasonable endeavours to procure that each of the Conditions Precedent in clauses 3.1(d), 3.1(e), 3.1(f), 3.1(g), 3.1(i), 3.1(j) and 3.1(k) is satisfied as soon as practicable after the date of this deed (to the extent it is not satisfied already) and continues to be satisfied at all times until the last time that the relevant clause provides that it is to be satisfied.
- (b) The Consortium Sub must, to the extent it is within its power to do so, use all reasonable endeavours to procure that the Conditions Precedent in clauses 3.1(a), 3.1(b) and 3.1(c) are satisfied as soon as practicable after the date of this deed and continue to be satisfied at all times until the last time that the relevant clause provides that it is to be satisfied.
- (c) Each party must, to the extent it is within its respective power to do so, use all reasonable endeavours to procure that:
- (1) the Condition Precedent in clause 3.1(h) continues to be satisfied at all times until the last time that the clause provides that it is to be satisfied; and
- (2) there is no occurrence within its control or the control of any of its Related Entities that would prevent any of the Conditions Precedent being or remaining satisfied.
- (d) Spark RE will not be in breach of its obligations under clause 3.2(a) or clause 3.2(c) to the extent that it takes an action or omits to take an action:
- (1) as required or expressly permitted by this deed (including without limitation taking an action or omitting to take an action in response to a Competing Proposal as permitted by clause 11); or
- (2) which has been consented to in writing by the Consortium Sub.
- (e) Without limiting this clause 3.2, the Consortium Sub must:



- (1) promptly apply for the Regulatory Approvals and provide to Spark RE:
- (A) a copy of the application for the Regulatory Approval in clause 3.1(a); and
 - (B) reasonable evidence of the submission of appropriate applications for the other Regulatory Approvals;
- (2) take all steps reasonably required as part of the Regulatory Approvals process, including responding to requests for information from any relevant Government Agency at the earliest practicable time; and
- (3) keep Spark RE informed of progress in relation to the Regulatory Approvals (including in relation to any material matters raised by, or conditions or other arrangements proposed by, or to, any Government Agency in relation to the Regulatory Approvals) and provide Spark RE with all information reasonably requested in connection with the application for, or progress of, the Regulatory Approvals,
- provided that the Consortium Sub may withhold or redact information or documents from Spark RE if and to the extent that they are either confidential to a third party or commercially sensitive and confidential to the applicant or subject to legal professional privilege in favour of the party.
- (f) Spark RE will provide the Consortium Sub with all assistance and information that it reasonably requests in connection with an application for the Regulatory Approvals to be lodged by the Consortium Sub.

3.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d), 3.1(e) and 3.1(g) cannot be waived.
- (b) The Conditions Precedent in clauses 3.1(i), 3.1(j) and 3.1(k) are for the sole benefit of the Consortium Sub and may only be waived by the Consortium Sub (in its absolute discretion) in writing.
- (c) The Condition Precedent in clause 3.1(f) is for the sole benefit of Spark RE and may only be waived by Spark RE (in its absolute discretion) in writing.
- (d) The Condition Precedent in clause 3.1(h) is for the benefit of both parties and may only be waived by written agreement between the Consortium Sub and Spark RE (in each case in their respective absolute discretion).
- (e) If a party waives the breach or non-satisfaction of any of the Conditions Precedent in clause 3.1, for clarity it also waives its right to sue the other party for any breach of this deed that resulted in the breach or non-satisfaction of the relevant Condition Precedent.
- (f) Waiver of a breach or non-satisfaction in respect of one Condition Precedent does not constitute:
 - (1) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same event; or
 - (2) a waiver of breach or non-satisfaction of that Condition Precedent resulting from any other event.

3.4 Termination on failure of Condition Precedent

- (a) If there is an event or occurrence that would or does prevent any of the Conditions Precedent being satisfied (including, for the avoidance of doubt, if



Spark Securityholders do not agree to the Trust Scheme Resolutions at the Trust Scheme Meeting or to the Creditors' Scheme Resolutions at the Creditors' Scheme Meeting by the requisite majorities), or if any of the Conditions Precedent will not otherwise be satisfied, by the earlier of:

- (1) the time and date specified in this deed for the satisfaction of that Condition Precedent; and
- (2) the End Date,

or such Condition Precedent is otherwise not satisfied by that specified time and date or by the End Date (as applicable), then either party may give the other party written notice (**Consultation Notice**) within 5 Business Days after a relevant notice being given under clause 3.5(b) and the parties then must consult in good faith to:

- (1) consider and, if agreed, determine whether the Transaction may proceed by way of alternative means or methods or whether, in the case of a breach of a Condition Precedent in clauses 3.1(i) or 3.1(j), the breach or the effects of the breach is or are able to be remedied; or
- (2) consider changing and, if agreed, change, the date of the application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Creditors' Scheme or to seek the Second Judicial Advice (or both) or adjourning either or both applications (as applicable) to another date agreed to in writing by the Consortium Sub and Spark RE (being a date no later than 5 Business Days before the End Date), unless there is no reasonable prospect that the Condition Precedent will be satisfied before the End Date; or
- (3) consider extending and, if agreed, extend, the relevant date or End Date,

respectively.

- (b) Subject to clause 3.4(c), if the parties are unable to reach agreement under clause 3.4(a) within 5 Business Days after the date on which the Consultation Notice is given, then, unless:
 - (1) the relevant Condition Precedent has been waived in accordance with clause 3.3; or
 - (2) each party (or parties) entitled to waive the relevant Condition Precedent in accordance with clause 3.3 confirms in writing to the other party that it will not rely on the event or occurrence that would or does prevent the relevant Condition Precedent from being satisfied, or would mean the relevant Condition Precedent would or will not otherwise be satisfied,

either party may terminate this deed without any liability to the other party because of that termination (except as provided under clause 14.4). For the avoidance of doubt, nothing in this clause 3.4(b) affects the obligation of Spark RE to pay the Reimbursement Fee if it is required to do so under clause 12, or the obligation of the Consortium Sub to pay the Reverse Reimbursement Fee if it is required to do so under clause 13.

- (c) A party may not terminate this deed pursuant to clause 3.4(b) if:
 - (1) the relevant occurrence or event, the failure of the Condition Precedent to be satisfied, or the failure of the Schemes to become Effective, arises out of a breach of clauses 3.2 or 3.5 by that party,



although in such circumstances the other party may still terminate this deed; or

- (2) the relevant Condition Precedent is stated in clause 3.3 to be for the sole benefit of the other party.

3.5 Notices relating to Conditions Precedent

If a party becomes aware of:

- (a) the satisfaction of a Condition Precedent or of any material progress towards such satisfaction; or
- (b) the happening of an event or occurrence that would, does, will, or would reasonably be likely to:
 - (1) prevent a Condition Precedent being satisfied; or
 - (2) mean that any Condition Precedent will not otherwise be satisfied, before the time and date specified for its satisfaction (or being satisfied by the End Date, if no such time and date is specified) or such Condition Precedent is not otherwise satisfied by that time and date (including, for the avoidance of doubt, if Spark Securityholders do not agree to the Trust Scheme Resolutions at the Trust Scheme Meeting or to the Creditors' Scheme Resolutions at the Creditors' Scheme Meeting by the requisite majorities),

it must advise the other party by notice in writing, as soon as possible.

4 Transaction steps

4.1 Schemes

Spark RE must, subject to the terms and conditions of this deed, propose the Schemes to Spark Securityholders.

4.2 No amendment to the Schemes without consent

Spark RE must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Schemes without the prior written consent of the Consortium Sub.

4.3 Scheme Consideration

- (a) The parties acknowledge that each Scheme Securityholder will be entitled to receive the Scheme Consideration in respect of each Scheme Security held by that Scheme Securityholder in accordance with the terms and conditions of this deed and the Schemes.
- (b) The Consortium Sub undertakes and warrants to Spark RE (in its own right and separately as trustee on behalf of the Scheme Securityholders) that, in consideration of the transfer to the Consortium Sub of each Scheme Security held by a Scheme Securityholder under the terms of the Schemes, on the Implementation Date the Consortium Sub will provide to each Scheme Securityholder the Scheme Consideration for each Scheme Security in accordance with the terms and conditions of this deed and the Schemes.



4.4 Provision of Spark Security information

- (a) In order to facilitate the provision of the Scheme Consideration, Spark RE must provide, or procure the provision of, to the Consortium Sub or a nominee of the Consortium Sub a complete copy of the Spark Security Register as at the Scheme Record Date (which must include the name, Registered Address and registered holding of each Scheme Securityholder as at the Scheme Record Date), within one Business Day after the Scheme Record Date.
- (b) The details and information to be provided under clause 4.4(a) must be provided in such form as the Consortium Sub may reasonably require.

4.5 Spark Performance Rights

- (a) Spark RE confirms and the Consortium Sub acknowledges that, subject to the Schemes becoming Effective, Spark RE will take such action as is necessary to ensure that, before the Scheme Record Date, all Spark Performance Rights will vest in accordance with their terms, which action will include:
 - (1) the Spark Board accelerating the vesting of, or waiving any vesting conditions or vesting periods applying to, any or all Spark Performance Rights (subject to the proper exercise of the Spark Board's discretion); and
 - (2) Spark RE (at its election):
 - (A) issuing or procuring the issue or transfer of such number of Spark Securities as required by the terms of the Spark Performance Rights before the Scheme Record Date so that the holders of Spark Performance Rights can participate as Scheme Securityholders in the Schemes and receive the Scheme Consideration; or
 - (B) making cash payments for an amount equal to the Scheme Consideration (less any amounts required to be withheld under any applicable Law) to holders of Spark Performance Rights in lieu of the issue or transfer of Spark Securities, pursuant to the terms of the Spark Performance Rights.
- (b) As soon as reasonably practicable after the date of this deed, Spark RE must use its reasonable endeavours to procure that the ASX grants a waiver from rule 6.23 of the Listing Rules (to the extent required) in connection with any actions to be taken by Spark RE under this clause 4.5. If the waiver is not obtained before the First Court Date, then Spark RE agrees to seek any approvals that are required from Spark Securityholders under rule 6.23 of the Listing Rules in connection with any actions to be taken by Spark RE under this clause 4.5.

4.6 Related Steps

On or before the Implementation Date, Spark RE must take all actions within its power to implement the Related Steps in the order set out in Schedule 6.



5 Implementation

5.1 Timetable

- (a) Subject to clause 5.1(b), the parties must each use all reasonable endeavours to:
 - (1) comply with their respective obligations under this clause 5; and
 - (2) take all necessary steps and exercise all rights necessary to implement the Transaction,in accordance with the Timetable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5.1(a) to the extent that such failure is due to circumstances and matters outside the party's control, acting reasonably, (including, for the avoidance of doubt, any delays caused by a Government Agency) or due to Spark RE taking or omitting to take any action in response to a Competing Proposal as permitted by this deed.
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.

5.2 Spark RE's obligations

Subject to any change of recommendation by the Spark Board that is permitted by clause 5.5(c), Spark RE must take all necessary steps to implement the Schemes as soon as is reasonably practicable and, without limiting the foregoing, (i) use all reasonable endeavours to ensure that each step in the Timetable is met by the relevant date set out beside that step, including by doing any acts it is authorised and able to do on behalf of Spark Securityholders (other than Excluded Securityholders) (and must consult with the Consortium Sub on a regular basis about its progress in that regard), and (ii) do each of the following:

- (a) **preparation of Scheme Booklet:** subject to clauses 5.3(a) and 5.3(b), prepare and despatch the Scheme Booklet in accordance with all applicable laws (including the Corporations Act and the Corporations Regulations, subject to any exemptions or modifications granted by ASIC), RG 60, applicable Takeovers Panel guidance notes and the Listing Rules;
- (b) **directors' recommendation:** include in the Scheme Booklet a statement by the Spark Board:
 - (1) unanimously recommending that Spark Securityholders (other than Excluded Securityholders) vote in favour of the Schemes in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Schemes are in the best interests of Spark Securityholders; and
 - (2) that each Spark Board Member will (subject to the same qualifications as set out in clause 5.2(b)(1)) vote, or procure the voting of, any Director Spark Securities at the time of the Scheme Meetings in favour of the Schemes at the Scheme Meetings,



unless there has been a change of recommendation permitted by clause 5.5;

- (c) **promote Transaction:** participate in efforts reasonably requested by the Consortium Sub to promote the merits of the Transaction;
- (d) **paragraph 411(17)(b) statement:** apply to ASIC for the production of:
- (1) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
 - (2) a statement under paragraph 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Creditors' Scheme;
- (e) **Court direction:** apply to the Court for orders pursuant to subsection 411(1) of the Corporations Act directing Spark RE to convene the Creditors' Scheme Meeting and for the Judicial Advices;
- (f) **Trust Scheme Meeting:** convene the Trust Scheme Meeting and put the Trust Scheme Resolutions to the Spark Securityholders (as holders of Spark Units);
- (g) **Creditors' Scheme Meeting:** convene the Creditors' Scheme Meeting to seek agreement of Spark Securityholders (as holders of Spark Notes) to the Creditors' Scheme in accordance with the orders made by the Court pursuant to subsection 411(1) of the Corporations Act;
- (h) **proxy reports:** keep the Consortium Sub reasonably informed on the status of proxy forms received for the Scheme Meetings, including over the period commencing 10 Business Days before the Scheme Meetings and ending on the deadline for receipt of proxy forms;
- (i) **Court documents:** consult, to the extent practicable, with the Consortium Sub in relation to the content of the documents required for the purpose of each of the Court hearings held for the purpose of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act, and for the Judicial Advices, in relation to the Schemes (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purpose of amending drafts of those documents, comments from the Consortium Sub and its Related Persons on those documents;
- (j) **Court approval:** if:
- (1) the Trust Scheme Resolutions are passed by Spark Securityholders (other than Excluded Securityholders), as holders of Spark Units, by the requisite majorities under section 601GC(1) and item 7 of section 611 of the Corporations Act; and
 - (2) the Creditors' Scheme is approved by Spark Securityholders (other than Excluded Securityholders), as holders of Spark Notes, under subparagraph 411(4)(a)(i) of the Corporations Act,
- and it can reasonably be expected that all of the Conditions Precedent (other than the Condition Precedent in clause 3.1(g)) will be satisfied or waived in accordance with this deed before 8.00am on the Second Court Date, apply to the Court for orders approving the Creditors' Scheme as agreed to by the Spark Securityholders (other than Excluded Securityholders) at the Creditors' Scheme Meeting and for the Second Judicial Advice;
- (k) **certificate:** at the hearing on the Second Court Date provide to the Court:
- (1) a certificate (signed for and on behalf of Spark RE) in the form of a deed (substantially in the form set out in Attachment 4) confirming whether or not the Conditions Precedent (other than the Condition Precedent in clause 3.1(g)) have been satisfied or waived in accordance with this deed, a draft of which certificate must be



provided by Spark RE to the Consortium Sub by 4.00pm on the date that is two Business Days before the Second Court Date; and

- (2) any certificate provided to it by the Consortium Sub pursuant to clause 5.3(i);
- (l) **lodge copy of Court order:** lodge with ASIC an office copy of the Court order in accordance with subsection 411(10) of the Corporations Act approving the Creditors' Scheme by no later than the Business Day after the date on which the Court order was made (or such later date as agreed in writing by the Consortium Sub);
- (m) **Scheme Consideration:** if the Schemes become Effective, finalise and close the Spark Security Register as at the Scheme Record Date, and determine entitlements to the Scheme Consideration, in accordance with the Schemes and the Deed Poll;
- (n) **transfer and registration:** if the Schemes become Effective and subject to the Consortium Sub having paid the Scheme Consideration in accordance with the Schemes and Deed Poll:
 - (1) execute, on behalf of Scheme Securityholders, instruments of transfer of the Scheme Securities to the Consortium Sub; and
 - (2) register all transfers of the Scheme Securities to the Consortium Sub on the Implementation Date;
- (o) **consultation with the Consortium Sub in relation to Scheme Booklet:** consult with the Consortium Sub as to the content and presentation of the Scheme Booklet including:
 - (1) providing to the Consortium Sub drafts of the Scheme Booklet and the Independent Expert's Report for the purpose of enabling the Consortium Sub to review and comment on those draft documents. In relation to the Independent Expert's Report, the Consortium Sub's review is to be limited to a factual accuracy review;
 - (2) considering all comments made by the Consortium Sub in good faith when producing a revised draft of the Scheme Booklet;
 - (3) providing to the Consortium Sub a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable the Consortium Sub to review the Regulator's Draft before the date of its submission; and
 - (4) obtaining written consent from the Consortium Sub for the form and content in which the Consortium Information appears in the Scheme Booklet;
- (p) **information:** provide all necessary information, and use reasonable endeavours to procure that the Spark Registry provides all necessary information, in each case in a form reasonably requested by the Consortium Sub, about the Schemes and Spark Securityholders to the Consortium Sub and its Related Persons, which the Consortium Sub reasonably requires in order to:
 - (1) understand the legal and beneficial ownership of Spark Securities, and (subject to Spark RE's prior written consent) canvass agreement to the Schemes by Spark Securityholders; or
 - (2) facilitate the provision by, or on behalf of, the Consortium Sub of the Scheme Consideration;
- (q) **lodgement of Regulator's Draft:** as soon as practicable, but by no later than 14 days before the First Court Date, provide the Regulator's Draft to ASIC for its



review for the purposes of subsection 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to the Consortium Sub as soon as practicable after it has been provided to ASIC;

- (r) **ASIC and ASX review of Scheme Booklet:** keep the Consortium Sub informed of any matters raised by ASIC or ASX in relation to the Scheme Booklet or the Transaction, and take into consideration any comments made by the Consortium Sub in relation to any such matters raised by ASIC or ASX;
- (s) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (t) **Independent Expert:** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by the Independent Expert for inclusion in the Scheme Booklet (including any updates to it);
- (u) **assistance:** up to the Implementation Date and subject to obligations of confidentiality owed to third parties and undertakings to Government Agencies, provide the Consortium Sub and its Related Persons with reasonable access during normal business hours to information and personnel of the Spark Group that the Consortium Sub reasonably requests for the purpose of preparation, collation and provision of the Consortium Information and implementation of the Transaction;
- (v) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations;
- (w) **listing:** subject to clause 5.2(y), not do anything to cause Spark Securities to cease being quoted on ASX, or to become permanently suspended from quotation or to remove Spark Infrastructure Group from the Official List of the ASX until after implementation of the Transaction unless the Consortium Sub has agreed in writing;
- (x) **update Scheme Booklet:** until the date of the Scheme Meetings, promptly update or supplement the Scheme Booklet with, or where appropriate otherwise inform the market by way of announcement of, any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement, and seek the Court's approval for the despatch of any updated or supplementary Scheme Booklet. Spark RE must consult with the Consortium Sub as to the content and presentation of the updated or supplementary Scheme Booklet, or the market announcement, in the manner contemplated by clause 5.2(o);
- (y) **suspension of trading:** apply to ASX to suspend trading in Spark Securities with effect from the close of trading on the Effective Date; and
- (z) **securityholder support:** unless there has been a change of recommendation as permitted under clause 5.5, promote to the Spark Securityholders the merits of the Schemes, including soliciting proxy votes in favour of the Schemes.



5.3 Consortium Sub's obligations

The Consortium Sub must take all necessary steps to implement the Schemes as soon as is reasonably practicable and, without limiting the foregoing, must (i) use all reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step (and must consult with Spark RE on a regular basis about its progress in that regard), and (ii) do each of the following:

- (a) **Consortium Information:** prepare and promptly provide to Spark RE the Consortium Information for inclusion in the Scheme Booklet, including all information regarding the Consortium Group and the Scheme Consideration required by all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60, applicable Takeovers Panel guidance notes and the Listing Rules, and consent to the inclusion of that information in the Scheme Booklet;
- (b) **Scheme Booklet and Court documents:** promptly provide any assistance or information reasonably requested by Spark RE in connection with preparation of the Scheme Booklet (including any updated or supplementary Scheme Booklet) and any documents required to be filed with the Court in respect of the Schemes, promptly review the drafts of the Scheme Booklet (including any updated or supplementary Scheme Booklet) prepared by Spark RE and provide comments promptly on those drafts in good faith;
- (c) **Independent Expert's Report:** subject to the Independent Expert entering into arrangements with the Consortium Sub including in relation to confidentiality in a form reasonably acceptable to the Consortium Sub, provide any assistance or information reasonably requested by Spark RE or by the Independent Expert in connection with the preparation of the Independent Expert's Report to be sent together with the Scheme Booklet;
- (d) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (e) **Deed Poll:** by no later than the Business Day before the First Court Date, execute and deliver to Spark RE the Deed Poll;
- (f) **accuracy of Consortium Information:** confirm in writing to Spark RE that the Consortium Information in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (g) **security transfer:** if the Schemes become Effective:
 - (1) accept a transfer of the Scheme Securities as contemplated by clause 4.3(b); and
 - (2) execute instruments of transfer in respect of the Scheme Securities;
- (h) **Scheme Consideration:** if the Schemes become Effective, provide, or procure the provision of, the Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Schemes and the Deed Poll;
- (i) **certificate:** before the commencement of the hearing on the Second Court Date provide to Spark RE for provision to the Court at that hearing a certificate (signed for and on behalf of the Consortium Sub) in the form of a deed (substantially in the form set out in Attachment 4) confirming whether or not the Conditions Precedent (other than the Condition Precedent in clause 3.1(g)) have been satisfied or waived in accordance with this deed, a draft of which



certificate must be provided by the Consortium Sub to Spark RE by 4.00 pm on the date that is two Business Days before the Second Court Date;

- (j) **update Consortium Information:** until the date of the Scheme Meetings, promptly provide to Spark RE any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Consortium Information contained in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (k) **assistance:** provide reasonable assistance to Spark RE in its promotion of the merits of the transaction;
- (l) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations; and
- (m) **Excluded Securityholder:** if any Consortium Group Member acquires any Spark Securities after the date of this deed, notify Spark RE in writing of such acquisition and the relevant Consortium Group Member (and thereafter that entity will not be a 'Scheme Securityholder' for the purposes of this deed and will be excluded from the operation of the Schemes).

5.4 Appointment and resignation of directors

Spark RE must, as soon as practicable on the Implementation Date, after the Scheme Consideration has been despatched to Scheme Securityholders in accordance with the terms of the Schemes, take all actions necessary to:

- (a) cause the appointment of the nominees of the Consortium Sub to the Spark Board; and
- (b) ensure that all directors on the Spark Board, other than the Consortium Sub nominees and any other directors specified by the Consortium Sub, resign,

provided that Spark RE is not required to take any action under this clause 5.4 which would cause any Spark Group Member to be in breach of any applicable law or regulation.

5.5 Spark Board recommendation

- (a) Spark RE represents and warrants to the Consortium Sub that, as at the date this deed, each Spark Board Member has confirmed that:
 - (1) they do not hold any interest, directly or indirectly, that, as far as they are aware, would prevent them from making a recommendation or stating an intention as contemplated in clauses 5.5(a)(2) and 5.5(a)(3), respectively (except as disclosed in the Disclosure Letter);
 - (2) their recommendation in respect of the Schemes is that Spark Securityholders vote in favour of the Schemes; and
 - (3) they intend to vote, or cause to be voted, all Spark Securities that they hold or control in favour of the Schemes,in each case subject to:
 - (4) no Superior Proposal emerging; and
 - (5) the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Schemes are in the best interests of Spark Securityholders.



- (b) Spark RE must use all reasonable endeavours to procure that, subject to clause 5.5(c), the Spark Board Members unanimously recommend that Spark Securityholders (other than Excluded Securityholders) vote in favour of the Schemes at the Scheme Meetings in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Schemes are in the best interests of Spark Securityholders, and that the Scheme Booklet include a statement by the Spark Board to that effect.
- (c) Spark RE must use all reasonable endeavours to procure that the Spark Board collectively, and the Spark Board Members individually, do not adversely change, withdraw, adversely modify or adversely qualify its or their recommendation to vote in favour of the Schemes unless:
- (1) the Independent Expert provides a report to Spark RE (including either the Independent Expert's Report or any update of, or any revision, amendment or supplement to, that report) that concludes that the Schemes are not in the best interests of Spark Securityholders;
 - (2) Spark RE has received a Superior Proposal; or
 - (3) the change, withdrawal, modification or qualification occurs because of a requirement by a court or Government Agency of competent jurisdiction that one or more Spark Board Members abstain or withdraw from making a recommendation that Spark Securityholders vote in favour of the Schemes after the date of this deed,
- and Spark RE has complied with its obligations under clause 11.
- (d) For the purposes of clause 5.5(c), customary qualifications and explanations contained in the Scheme Booklet and any public announcements in relation to a recommendation to vote in favour of the Schemes to the effect that the recommendation is made:
- (1) in the absence of a Superior Proposal;
 - (2) in respect of any public announcement issued before the issue of the Scheme Booklet, 'subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Schemes are in the best interests of Spark Securityholders'; and
 - (3) in respect of the Scheme Booklet and any public announcements issued at the time of or after the issue of the Scheme Booklet, 'subject to the Independent Expert continuing to conclude that the Schemes are in the best interests of Spark Securityholders',
- will not be regarded as a failure to make, or a change, withdrawal, modification or qualification of, a recommendation in favour of the Schemes.

5.6 Conduct of Court proceedings

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



5.7 Scheme Booklet content and responsibility statements

- (a) The Scheme Booklet will contain a responsibility statement to the effect that:
 - (1) the Consortium Sub is responsible for the Consortium Information contained in the Scheme Booklet; and
 - (2) Spark RE is responsible for the Spark Information contained in the Scheme Booklet.
- (b) If after a reasonable period of consultation, Spark RE and the Consortium Sub are unable to agree on the form or content of the Scheme Booklet:
 - (1) where the determination relates to Consortium Information, the Consortium Sub will make the final determination as to the form and content of the Consortium Information; and
 - (2) in any other case, Spark RE will make the final determination as to the form and content of the Scheme Booklet, acting reasonably, provided that, if the Consortium Sub disagrees with such final form and content, Spark RE must include a statement to that effect in the Scheme Booklet.

5.8 Third party consents

- (a) As soon as practicable after the date of this deed, Spark RE and the Consortium Sub must seek to identify any change of control provisions in leases and any material contract, agreement, arrangement or commitment to which any one or more Spark Group Member is a party that may be triggered or exercised by the implementation of the Transaction. In respect of those leases and contracts:
 - (1) Spark RE and the Consortium Sub must, each acting reasonably, agree a proposed course of action and then Spark RE must initiate contact with the relevant counter-parties to request that they provide any consents or confirmations required or appropriate. No Consortium Group Member or any Related Person of any Consortium Group Member may contact any counter-parties without Spark RE or without Spark RE's prior written consent (which is not to be unreasonably withheld, conditioned or delayed);
 - (2) Spark RE must cooperate with, and provide reasonable assistance to, the Consortium Sub to obtain such consents or confirmations as expeditiously as possible, including by promptly providing any information reasonably required by counterparties (but nothing in this clause 5.8 requires Spark RE or the Consortium Sub to incur material expense); and
 - (3) the Consortium Sub must use all reasonable endeavours to comply with any requirements of the counter-parties that are required under the relevant agreements to be complied with by an assignee, transferee or new controller of Spark RE or the other relevant Spark Group Member.
- (b) Subject to Spark RE complying with this clause 5.8, a failure by a Spark Group Member to obtain any third party consent or confirmation will not constitute a breach of this deed by Spark RE.



5.9 Special Distribution

- (a) Notwithstanding any other provision of this deed, but subject to:
- (1) the Schemes becoming Effective; and
 - (2) Spark RE having received a favourable draft class ruling from the Australian Tax Office,
- Spark RE may (in its absolute discretion) declare and pay out of the Spark Infrastructure Trust a special distribution in an amount of up to \$0.125 per Spark Security (**Special Distribution**) to Spark Securityholders provided that:
- (3) the franking account balance of any Spark Group Member that is a corporate tax entity is not in deficit at any time from the date the resolution to pay the Special Distribution is made until and including the Implementation Date;
 - (4) Spark RE must provide a copy of the franking account for each Spark Group Member that is a corporate tax entity for review by the Consortium Sub on the following dates:
 - (A) five days before the resolution to pay the Special Distribution is passed; and
 - (B) the Implementation Date;
 - (5) the record date for the Special Distribution must be before the Scheme Record Date; and
 - (6) the payment date for the Special Distribution will be determined by Spark RE (in its absolute discretion), provided that the payment date occurs before the Scheme Record Date.
- (b) For the purposes of determining whether the franking account balance of a Spark Group Member that is a corporate tax entity is in deficit at a particular time (the **test time**) any tax refund above \$5 million that is reasonably expected to be received by such entity after that time will be taken to be received at the test time.
- (c) The Scheme Consideration will be reduced by the cash amount of the Special Distribution.

6 Period before Implementation

6.1 Conduct of business

Subject to clause 6.2, from the date of this deed up to and including the Implementation Date, and without limiting any other obligations of Spark RE under this deed, Spark RE must:

- (a) conduct its businesses and operations, and must do all things within its power to cause each other Spark Group Member to conduct its respective business and operations, in the ordinary and usual course generally consistent with the manner in which each such business and operations have been conducted in the 12 month period before the date of this deed and in accordance with all applicable laws, regulations and approvals in all material respects;
- (b) keep the Consortium Sub reasonably informed of any material developments concerning the conduct of its business;



- (c) not commence any material new lines of business in which the Spark Group is not engaged as of the date of this deed;
- (d) provide regular reports on the financial affairs of the Spark Group, including the provision of the Spark Group's monthly management accounts, in a timely manner to the Consortium Sub;
- (e) (subject to continued compliance by the Consortium Sub with the terms of the Confidentiality Agreement) continue to provide the Consortium Sub with access to the Disclosure Materials, but for clarity this does not require Spark RE to supplement the Disclosure Materials or otherwise maintain their currency;
- (f) take all steps reasonably within its power to ensure that no Spark Prescribed Occurrence and no Spark Regulated Event occurs; and
- (g) use all reasonable endeavours, and do all things within its power to procure that each other Spark Group Member uses all reasonable endeavours, to:
 - (1) preserve and maintain the value of the businesses and assets of the Spark Group;
 - (2) keep available the services of the directors, officers and key employees of each member of the Spark Group; and
 - (3) maintain and preserve their relationships with Government Agencies, customers, suppliers and others having business dealings with any Spark Group Member.

6.2 Permitted conduct

- (a) Nothing in clause 6.1 restricts the ability of Spark RE to take any action:
 - (1) which is required or expressly permitted by this deed or the Schemes or Related Steps, including for the avoidance of doubt actions to give effect to a Superior Proposal;
 - (2) which has been agreed to in writing by the Consortium Sub;
 - (3) which is required by any applicable law, regulation or contractual obligation (provided such contractual obligation has been Fairly Disclosed in the Disclosure Materials) or by a Government Agency (except in each case where that requirement arises as a result of an action by a Spark Group Member after the date of this deed);
 - (4) which is Fairly Disclosed in the Disclosure Materials as being an action that the Spark Group may carry out between (and including) the date of this deed and the Implementation Date;
 - (5) that Spark RE Fairly Disclosed in an announcement made by Spark RE to ASX, or in a publicly available document lodged by it or a Related Entity of Spark RE with ASIC, before the date of this deed;
 - (6) to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property, or a disease epidemic or pandemic, including the outbreak, escalation or any impact of, or recovery from, the Coronavirus), provided that, to the extent reasonably practicable having regard to the nature of the relevant emergency or disaster, Spark RE has consulted with the Consortium Sub in good faith in respect of the proposal to take such action or not take such action (as applicable) and considers any reasonable comments or requests of the Consortium Sub in relation to such proposal in good faith;



- (7) in the case of clause 6.1(a), to reasonably and prudently respond to changes in regulatory or legislative changes; or
- (8) which is undertaken in response to a Competing Proposal as permitted by clause 11.
- (b) Nothing in clause 6.1 restricts the ability of Spark RE to declare (and where applicable, pay) a cash distribution to Spark Securityholders for the financial year ending 31 December 2021, provided that:
- (1) the distribution does not exceed \$0.0625 per Spark Security;
- (2) the distribution must be paid to Spark Securityholders prior to the Scheme Record Date;
- (3) such distribution does not have a record date earlier than 31 December 2021;
- (4) any amounts required to be withheld under Subdivision 14-D or as otherwise required by law are withheld from such cash distribution, without gross-up of any kind; and
- (5) the distribution is otherwise made in the ordinary course and consistent with past practice.
- (c) Nothing in clause 6.1 restricts the ability of any Spark Group Member to incur Financial Indebtedness under the Senior Facility Agreements to fund the Final Distribution.

6.3 Access to people and information

Subject to clause 6.4, between the date of this deed and the Implementation Date, Spark RE must, and must do all things in its power to procure that each of the Spark Group Members:

- (a) respond to reasonable requests from the Consortium Sub and its representatives for information concerning the Spark Group (as soon as reasonably practicable after such requests are made) and afford to the Consortium Sub reasonable access to information (subject to any existing confidentiality obligations owed to third parties or any other applicable legal or contractual requirement), its premises, directors and officers of the Spark Group Members and such senior executives of Spark RE as reasonably requested by the Consortium Sub at mutually convenient times for the sole purposes of:
- (1) the Consortium Sub developing plans for Spark RE's operations following implementation of the Schemes, including the replacement of directors and officers of the Spark Group Members;
- (2) refinancing any Spark Group debt facilities or the provision of financing in connection with the Transaction and the Schemes;
- (3) the Consortium Sub obtaining an understanding of the operations of the Spark Group's business and operations; or
- (4) any other purpose agreed between the parties; and
- (b) without limiting clause 6.3(a), use reasonable endeavours to facilitate liaison between the Consortium Sub and Spark Group's existing financiers, noteholders, transactional banking and derivative instrument counterparties for the purposes of the Consortium Sub notifying and discussing change of control procedures and post-acquisition financing related matters with those financiers and/or managing the repayment and in the case of transactional banking and ordinary course derivative transactions, at the request of the Consortium Sub,



continuation of those counterparties on or after the Implementation Date and the efficient termination (or continuation as the case may be) of their existing financing arrangements with Spark Group with effect from that time.

6.4 Exceptions and qualifications

- (a) Nothing in clause 6.3 will require Spark RE to provide, or procure the provision of, information concerning:
 - (1) Spark RE's directors and management's consideration of the Schemes; or
 - (2) any actual, proposed or potential Competing Proposal (including directors' and management's consideration of any actual, proposed or potential Competing Proposal) provided that nothing in this clause 6.4 limits the obligations of Spark RE in clause 11.
- (b) Providing or procuring the provision of information or access to the Consortium Sub pursuant to clause 6.3 must not result in unreasonable disruptions to, or interference with, the Spark Group's business.
- (c) The Consortium Sub must:
 - (1) provide Spark RE with reasonable notice of any request for information or access; and
 - (2) comply with the reasonable requirements of Spark RE in relation to access granted to personnel or premises.
- (d) Nothing in clause 6.3 gives the Consortium Sub any rights as to the decision making of any Spark Group Member or its business.
- (e) Spark RE may provide to the Consortium Sub its records at a place other than Spark RE's business premises including via an electronic data room.
- (f) The Consortium Sub acknowledges that Spark RE may withhold or redact information or documents from the Consortium Sub if and to the extent that disclosure of such information or documents breaches an obligation of confidence owed by a Spark Group Member to a Third Party as at the date of this deed, or will result in the loss of legal professional privilege in favour of Spark RE or any other Spark Group Member.

7 Representations and warranties

7.1 The Consortium Sub's representations and warranties

The Consortium Sub represents and warrants to Spark RE (in its own right and separately as trustee or nominee for each of the other Spark Indemnified Parties) each of the Consortium Representations and Warranties.

7.2 The Consortium Sub's indemnity

The Consortium Sub agrees with Spark RE (in its own right and separately as trustee or nominee for each of the other Spark Indemnified Parties) to indemnify Spark RE and each of the Spark Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Spark RE or any



of the other Spark Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Consortium Representations and Warranties.

7.3 Spark RE's representations and warranties

Spark RE represents and warrants to the Consortium Sub (in its own right and separately as trustee or nominee for each of the other Consortium Indemnified Parties) each of the Spark RE Representations and Warranties.

7.4 Spark RE's indemnity

Spark RE agrees with the Consortium Sub (in its own right and separately as trustee or nominee for each Consortium Indemnified Party) to indemnify the Consortium Sub and each of the Consortium Indemnified Parties from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that the Consortium Sub or any of the other Consortium Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Spark RE Representations and Warranties.

7.5 Qualifications on Spark RE's representations, warranties and indemnities

- (a) The Spark RE Representations and Warranties made or given in clause 7.3 and the indemnity in clause 7.4, are each subject to matters that:
 - (1) have been Fairly Disclosed in the Disclosure Materials (other than in the case of the Spark RE Representation and Warranty given in paragraph (k) of Schedule 4);
 - (2) in the case of the Spark RE Representation and Warranty given in paragraph (k) of Schedule 4, have been Fairly Disclosed in the Disclosure Letter;
 - (3) have been Fairly Disclosed in an announcement by Spark RE to ASX, or in a publicly available document lodged by it or a Related Entity of Spark RE with ASIC, before the date of this deed; or
 - (4) are required or expressly permitted by this deed or the Schemes.
- (b) Where a Spark RE Representation and Warranty is given 'so far as Spark RE is aware' or with a similar qualification as to Spark RE's awareness or knowledge, Spark RE's awareness or knowledge is limited to and deemed only to include those facts, matters or circumstances of which a Specified Individual is actually aware as at the date of this deed and those facts, matters or circumstances that would have been within the actual knowledge, belief or awareness of those persons had they made reasonable enquiries of their direct reports as at the date of this deed.

7.6 Survival of representations and warranties

Each representation and warranty in clauses 7.1 and 7.3:

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



7.7 Survival of indemnities

Each indemnity in this deed (including those in clauses 7.2 and 7.4):

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

7.8 Timing of representations and warranties

Each representation and warranty made or given under clauses 7.1 or 7.3 is given at the date of this deed, the date of despatch of the Scheme Booklet, on the date of the Scheme Meetings and at 8:00am on the Second Court Date, unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.

7.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.
- (c) Each party acknowledges and confirms that clauses 7.9(a) and 7.9(b) do not prejudice any rights a party may have in relation to information which has been announced by the other party to ASX or lodged by it with ASIC, or that is contained in the Disclosure Materials.

8 Releases

8.1 Spark RE and Spark RE directors and officers

- (a) The Consortium Sub:
 - (1) releases its rights; and
 - (2) agrees with Spark RE that it will not make, and that after the Implementation Date it will procure that each Spark Group Member does not make, any Claim,against any Spark Indemnified Party (other than Spark RE) as at the date of this deed and from time to time in connection with:



- (3) any breach of any representations and warranties of Spark RE or any other member of the Spark Group in this deed or any breach of any covenant given by Spark RE in this deed;
- (4) any disclosures containing any statement which is false or misleading whether in content or by omission; or
- (5) any failure to provide information,
whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Spark Indemnified Party has engaged in wilful misconduct, wilful concealment or fraud. For the avoidance of doubt, nothing in this clause 8.1(a) limits the Consortium Sub's rights to terminate this deed under clause 14.
- (b) Clause 8.1(a) is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Spark RE receives and holds the benefit of this clause 8.1 to the extent it relates to each Spark Indemnified Party as trustee for each of them.

8.2 The Consortium Sub and the Consortium Sub directors and officers

- (a) Spark RE releases its rights, and agrees with the Consortium Sub that it will not make a Claim, against any Consortium Indemnified Party (other than the Consortium Sub) as at the date of this deed and from time to time in connection with:
- (1) any breach of any representations and warranties of the Consortium Sub in this deed or any breach of any covenant given by the Consortium Sub in this deed;
- (2) any disclosure containing any statement which is false or misleading whether in content or by omission; or
- (3) any failure to provide information,
whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Consortium Indemnified Party has engaged in wilful misconduct, wilful concealment or fraud. For the avoidance of doubt, nothing in this clause 8.2(a) limits Spark RE's rights to terminate this deed under clause 14.
- (b) Clause 8.2(a) is subject to any Corporations Act restriction and will be read down accordingly.
- (c) The Consortium Sub receives and holds the benefit of this clause 8.2 to the extent it relates to each Consortium Indemnified Party as trustee for each of them.

8.3 Deeds of indemnity and insurance

- (a) Subject to the Schemes becoming Effective and the Transaction completing, the Consortium Sub undertakes in favour of Spark RE and each other Spark Indemnified Party that it will:
- (1) for a period of seven years from the Implementation Date, ensure that the constitutions of Spark RE and each other Spark Group Member which is a body corporate continue to contain rules which are no less favourable overall to the Spark Indemnified Parties contained in those constitutions at the date of this deed that provide for each company to indemnify each of its directors and officers against any liability



- incurred by that person in their capacity as a director or officer of the company to any person other than a Spark Group Member; and
- (2) procure that Spark RE and each other Spark Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time.
- (b) The Consortium Sub acknowledges that notwithstanding any other provision of this deed, Spark RE may, before the Implementation Date, enter into an arrangement to secure directors' & officers', and investment managers', run-off insurance for up to such seven year period (**D&O Policy**), provided that:
- (1) the scope of cover of the D&O Policy will be on the same or substantially the same terms as the existing insurance policies in place for directors or officers of Spark RE at the date of this deed;
- (2) subject to Spark RE being entitled to obtain primary cover in respect of the D&O Policy from the same insurers as currently provide directors' & officers' and investment managers' insurance cover for the directors and officers of Spark RE and Spark Group Members, Spark RE will use reasonable endeavours to obtain the most attractive commercial terms for the D&O Policy from a reputable insurer; and
- (3) the premium for the D&O Policy does not exceed \$3,500,000, and that any actions to facilitate that insurance or in connection with such insurance will not be a Spark Regulated Event or a breach of any provision of this deed.
- (c) The undertakings contained in clause 8.3(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (d) Spark RE receives and holds the benefit of clause 8.3(a), to the extent it relates to the other Spark Indemnified Parties, as trustee for each of them.

9 Public announcement

9.1 Announcement of the Transaction

- (a) Immediately after the execution of this deed, Spark RE and the Consortium Sub must issue public announcements in a form previously agreed to in writing between them.
- (b) The Spark RE announcement must include a unanimous recommendation by the Spark Board to Spark Securityholders (other than Excluded Securityholders) that, in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent's Expert's Report (and continuing to conclude) that the Schemes are in the best interests of Spark Securityholders, Spark Securityholders (other than Excluded Securityholders) vote in favour of the Schemes and that subject to the same qualifications all the Spark Board Members will vote (or will procure the voting of) all Director Spark Securities at the time of the Scheme Meetings in favour of the Schemes at the Scheme Meetings.

9.2 Public announcements

Subject to clause 9.3, no public announcement or public disclosure of the Transaction or any other transaction the subject of this deed or the Schemes may be made other than in



a form approved by each party in writing (acting reasonably), but each party must use all reasonable endeavours to provide such approval as soon as practicable. For the avoidance of doubt, this clause 9.2 does not apply to any announcement or disclosure relating to a Competing Proposal.

9.3 Required disclosure

Where a party is required by applicable law or the Listing Rules to make any announcement or to make any disclosure in connection with the Transaction or any other transaction the subject of this deed or the Schemes, it may do so despite clause 9.2 but must use all reasonable endeavours, to the extent practicable and lawful, to consult with the other party before making the relevant disclosure.

10 Confidentiality

Spark RE and the Consortium Sub acknowledge and agree that they continue to be bound by the Confidentiality Agreement after the date of this deed. The rights and obligations of the parties under the Confidentiality Agreement survive termination of this deed.

11 Exclusivity

11.1 No existing discussions

Spark RE represents and warrants to the Consortium Sub that, as at the date of this deed it and each of its Related Entities and their respective Related Persons:

- (a) is not a party to any agreement, arrangement or understanding with a Third Party entered into for the purpose of facilitating a Competing Proposal;
- (b) is not participating in any discussions, negotiations or other communications, and has terminated any existing discussions, negotiations or other communications, in relation to a Competing Proposal, or which could reasonably be expected to lead to a Competing Proposal; and
- (c) has ceased to provide or make available any material non-public information in relation to the Spark Group to a Third Party where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Competing Proposal.

11.2 Enforcement of existing confidentiality agreements

Unless otherwise agreed by the Consortium Sub, Spark RE must:

- (a) promptly enforce the terms of any confidentiality agreement, deed or undertaking (or similar document) entered into with a person other than the Consortium Sub in the 12 months prior to the date of this deed in relation to any Competing Proposal (including, where any non-public information in relation to the Spark Group (**Non-Public Spark Information**) has been provided or made available to such person, request immediately the return or destruction of that Non-Public Spark Information in accordance with any agreed terms of confidentiality currently in place with such person); and



- (b) not waive, and must promptly enforce, any standstill obligations of any such person.

11.3 No shop and no talk

- (a) During the Exclusivity Period, Spark RE must not, and must ensure that each of its Related Persons and Related Entities and the Related Persons of those Related Entities do not, directly or indirectly, solicit, invite, encourage or initiate any inquiry, expression of interest, offer, proposal, discussion or other communication by any Third Party in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause 11.3(a); or
- (b) Subject to clause 11.4, during the Exclusivity Period, Spark RE must not, and must ensure that each of its Related Persons and Related Entities and the Related Persons of those Related Entities do not, directly or indirectly:
 - (1) facilitate, participate in or continue any negotiations, discussions or other communications with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal;
 - (2) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal; or
 - (3) disclose or otherwise provide or make available any Non-Public Spark Information to a Third Party (other than a Government Agency that has the right to obtain that information and has sought it) in connection with, with a view to obtaining, or which would reasonably be expected to encourage or lead to the formulation, receipt or announcement of, an actual, proposed or potential Competing Proposal (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of the Spark Group) whether by that Third Party or another person; or
 - (4) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 11.3(b).

11.4 Fiduciary exception

Clause 11.3(b) does not prohibit any action or inaction by Spark RE, any of its Related Entities or any of their respective Related Persons, in relation to an actual, proposed or potential bona fide Competing Proposal received by Spark RE in writing if the Spark Board determines that:

- (a) after consultation with its advisers, such Competing Proposal is a Superior Proposal or could reasonably be expected to become a Superior Proposal; and
- (b) after receiving written legal advice from its external legal advisers, compliance with that clause would, or would be reasonably likely to, constitute a breach of any of the fiduciary or statutory duties of the directors of Spark RE,

provided that such Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of clause 11.3(a) and Spark RE has complied with its obligations under clause 11.5 in relation to the Competing Proposal.



11.5 Notification of approaches

- (a) During the Exclusivity Period, Spark RE must as soon as possible (and in any event within 24 hours) notify the Consortium Sub in writing if it:
- (1) becomes aware of any negotiations, discussions or approach in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal, whether direct or indirect, solicited or unsolicited, and in writing or otherwise (and whether to or with Spark RE or any other Spark Group Member, or any of their respective Related Persons);
 - (2) becomes aware of any request made by a Third Party (whether to Spark RE or to any other Spark Group Member, or any of their respective Related Persons) for any Non-Public Spark Information, other than where the Spark Board reasonably believes that such request is not in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, any actual, proposed or potential Competing Proposal;
 - (3) or a Spark Group Member, decides to disclose Non-Public Spark Information to any person in connection with an actual, proposed or potential Competing Proposal; or
 - (4) receives any Competing Proposal (in writing or otherwise), or becomes aware that any other Spark Group Member (or any Related Person of any Spark Group Member) has received any Competing Proposal (in writing or otherwise).
- (b) A notification given under clause 11.5(a) must include the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal and material details of the actual, proposed or potential Competing Proposal (to the extent known by Spark RE) including all material terms and conditions (including consideration).

11.6 Matching right

- (a) Without limiting clause 11.3, during the Exclusivity Period, Spark RE must not, and must procure that Spark Group Members do not, enter into any agreement, arrangement or understanding (whether or not in writing, but not including an agreement or arrangement falling within clause 11.6(b)) in relation to an actual, proposed or potential Competing Proposal unless:
- (1) the Spark Board acting in good faith and in order to satisfy what the Spark Board Members consider to be their statutory or fiduciary duties (having received written legal advice from its external legal advisers) determines that the Competing Proposal is, or would be or would be reasonably likely to be, an actual, proposed or potential Superior Proposal;
 - (2) Spark RE has provided the Consortium Sub with the material terms and conditions of the actual, proposed or potential Competing Proposal (including price) (in each case, to the extent known) and the identity of the Third Party making the actual, proposed or potential Competing Proposal;
 - (3) Spark RE has given the Consortium Sub at least five Business Days after the date of the provision of the information referred to in clause



- 11.6(a)(2) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal; and
- (4) the Consortium Sub has not announced or otherwise formally proposed to Spark RE a proposal that the Spark Board, acting reasonably and in good faith, determines to be matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal by the expiry of the five Business Day period in clause 11.6(a)(3).
- (b) Without limiting clause 11.3, entry by Spark RE into a confidentiality agreement with (or providing due diligence access to) a Third Party will not of itself trigger the matching right process set out in clause 11.6(a).
- (c) If the Consortium Sub announces or otherwise proposes or provides amendments to the Schemes or a new proposal (**Consortium Sub Counterproposal**) by the expiry of the 5 Business Day period in clause 11.6(a)(3), then Spark RE must procure that the Spark Board considers the Consortium Sub Counterproposal and, acting reasonably and in good faith, determines whether the Consortium Sub Counterproposal would provide an equivalent or superior outcome for Spark Securityholders as a whole (other than Excluded Securityholders) compared with the Competing Proposal, taking into account all of the terms and conditions of the Consortium Sub Counterproposal and other aspects of:
- (1) the Consortium Sub Counterproposal (including the value and type of consideration, funding, any timing considerations, any conditions precedent, the identity, reputation and financial condition of the proponent, the views of Spark Securityholders in relation to the Consortium Sub Counterproposal compared to the Competing Proposal, the ability of the proponent to complete the transactions contemplated by the Consortium Sub Counterproposal, the probability of the Consortium Sub Counterproposal being completed compared to the Competing Proposal and other relevant legal, financial, regulatory and other matters); and
- (2) the Competing Proposal (including the matters set out in paragraphs (3) and (4) of the definition of "Superior Proposal").
- (d) Following that determination, Spark RE must:
- (1) procure that the Spark Board promptly, and in any event within 1 Business Day, notifies the Consortium Sub of the determination in writing, stating reasons for that determination; and
- (2) if the determination is that the Consortium Sub Counterproposal would provide an equivalent or superior outcome for Spark Securityholders as a whole (other than Excluded Securityholders) compared with the Competing Proposal, then Spark RE and Consortium Sub must use their best endeavours to agree the amendments to this deed, the Schemes, the Deed Poll and the Spark Infrastructure Trust Supplemental Deed (as applicable) that are reasonably necessary to reflect the Consortium Sub Counterproposal and to implement the Consortium Sub Counterproposal, in each case as soon as reasonably practicable, and Spark RE must use its best endeavours to procure that each Spark Board Member continues to recommend the Transaction (as modified by the Consortium Sub Counterproposal) to Spark Securityholders (other than Excluded Securityholders).
- (e) For the avoidance of doubt, each successive material change to the value of consideration offered for Spark Securities under, or the conditions to



implementation of, a Competing Proposal will constitute a new Competing Proposal.

- (f) Spark RE or the Spark Board will not be in breach of this deed by virtue only of making a statement to the effect that a Competing Proposal has been received and that the matching right process in this clause 11.6 has been commenced.
- (g) Despite any other provision in this deed, a statement by Spark RE or the Spark Board to the effect that:
 - (1) the Spark Board has determined that a Competing Proposal is, or would be or would be reasonably likely to be, an actual, proposed or potential Superior Proposal, and has commenced the matching right process set out in this clause 11.6; or
 - (2) Spark Securityholders should take no action pending the completion of the matching right process set out in this clause 11.6,does not of itself:
 - (3) constitute a change, withdrawal, modification or qualification of the recommendation by the Spark Board Members or an endorsement of a Competing Proposal;
 - (4) contravene this deed;
 - (5) give rise to an obligation to pay the Reimbursement Fee under clause 12.2; or
 - (6) give rise to a termination right under clause 14.1.

11.7 Compliance with law

- (a) If it is finally determined by a court, or the Takeovers Panel, that the agreement by the parties under this clause 11 or any part of it:
 - (1) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the Spark Board;
 - (2) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or
 - (3) was, or is, or would be, unlawful for any other reason,then, to that extent (and only to that extent) Spark RE will not be obliged to comply with that provision of clause 11.
- (b) The parties must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 11.7.

11.8 Spark RE obligations

- (a) Spark RE must procure that, before any Non-Public Spark Information is provided to any Third Party in connection with a Competing Proposal in reliance on clause 11.4, the Third Party enters into a confidentiality agreement with Spark RE.
- (b) If the confidentiality agreement with the Third Party provides for the Third Party to be bound by obligations that are more favourable to that person in any material respect (disregarding any differences relating to the structure or particular features of the Third Party) than those in the Confidentiality Agreement (including in clauses 6 and 7 the Confidentiality Agreement) as they



relate to OTPP, KKR Asia and PSP (including by waiving such obligations), then Spark RE must:

- (1) waive or agree to modify the relevant obligations in the Confidentiality Agreement to the extent necessary so that the terms applying to OTPP, KKR Asia and PSP and the Consortium Sub are no less favourable to OTPP, KKR Asia and PSP and the Consortium Sub in any material respect than the terms applying to the Third Party; and
 - (2) notify OTPP, KKR Asia and PSP and the Consortium Sub of the terms which are waived or which it agrees to modify.
- (c) If any Non-Public Spark Information is provided or made available to any Third Party in connection with an actual, proposed or potential Competing Proposal which has not previously been provided or made available to the Consortium Sub, then Spark RE must promptly, and in any event within 2 Business Days, provide to the Consortium Sub:
- (1) in the case of written materials, a copy of; and
 - (2) in any other case, a written statement of,
- that Non-Public Spark Information, except that Spark RE will not have any obligation to provide:
- (3) any Non-Public Spark Information to the Consortium Sub where it reasonably considers disclosure of such information to the Consortium Sub would be reasonably likely to breach any applicable Law; or
 - (4) any questions asked by the Third Party and responses to such questions provided by or on behalf of Spark RE (other than documents that are provided in connection with such responses).
- (d) The Consortium Sub receives and holds the benefit of this clause 11.8 to the extent it relates to OTPP, KKR Asia and PSP as trustee for each of them.

11.9 Usual provision of information

Nothing in this clause 11 prevents Spark RE from:

- (a) providing any information to its Related Persons;
- (b) providing any information to any Government Agency;
- (c) providing any information required to be provided by any applicable law, including to satisfy its obligations under the Listing Rules or to any Government Agency;
- (d) providing any information to its auditors;
- (e) promoting the merits of the Transaction; and
- (f) other than in connection with soliciting, inviting, encouraging or initiating an actual, proposed or potential Competing Proposal:
 - (1) providing any information to its customers, financiers, joint venturers, suppliers, contractual counterparties or shareholders; and
 - (2) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts and other third parties, and engaging with financiers and potential financiers.



12 Reimbursement Fee

12.1 Background to Reimbursement Fee

- (a) The Consortium Sub and Spark RE acknowledge that, if they enter into this deed and the Schemes are subsequently not implemented, the Consortium Sub will incur significant costs, including those set out in clause 12.4.
- (b) In these circumstances, the Consortium Sub has requested that provision be made for the payments outlined in clause 12.2, without which the Consortium Sub would not have entered into this deed or otherwise agreed to implement the Schemes.
- (c) The Spark Board believes, having taken advice from its external legal advisers and Financial Adviser, that the implementation of the Schemes will provide benefits to Spark RE and the Spark Securityholders (other than Excluded Securityholders) and that it is appropriate for Spark RE to agree to the payments referred to in clause 12.2 in order to secure the Consortium Sub's participation in the Transaction.

12.2 Reimbursement Fee triggers

Subject to this clause 12, Spark RE must pay the Reimbursement Fee to the Consortium Sub if:

- (a) during the Exclusivity Period, one or more Spark Board Members withdraws, adversely changes, adversely modifies or adversely qualifies their support of the Schemes or their recommendation that Spark Securityholders (other than Excluded Securityholders) vote in favour of the Schemes or fails to recommend that Spark Securityholders (other than Excluded Securityholders) vote in favour of the Schemes in the manner described in clause 5.5(a), unless:
 - (1) the Independent Expert concludes in the Independent Expert's Report (or in any update of, or revision, amendment or supplement to, that report) that the Schemes are not in the best interests of Spark Securityholders (except where that conclusion is due wholly or partly to the existence, announcement or publication of a Competing Proposal);
 - (2) the failure to recommend, or the change to or withdrawal of a recommendation to vote in favour of the Schemes occur because of a requirement by a court or Government Agency of competent jurisdiction that one or more Spark Board Members abstain or withdraw from making a recommendation that Spark Securityholders vote in favour of the Schemes after the date of this deed; or
 - (3) Spark RE has terminated this deed pursuant to clause 14.1 or clause 14.2,provided that, for the avoidance of doubt, a statement made by Spark RE or the Spark Board to the effect that no action should be taken by Spark Securityholders pending the assessment of a Competing Proposal by the Spark Board or the completion of the matching right process set out in clause 11.6 will not of itself require Spark RE to pay the Reimbursement Fee to the Consortium Sub;
- (b) during the Exclusivity Period, one or more Spark Board Members recommends that Spark Securityholders accept or vote in favour of, or otherwise supports or endorses (including support by way of accepting or voting, or by way of stating



an intention to accept or vote, in respect of any Director Spark Securities), a Competing Proposal of any kind that is announced (whether or not such proposal is stated to be subject to any pre-conditions) during the Exclusivity Period;

- (c) a Competing Proposal of any kind is received by the Spark RE or announced prior to the earlier of:
- (1) the End Date; or
 - (2) if Spark RE terminates this deed pursuant to clause 14, the date of the termination,
- (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months of the date of such receipt (or where the Competing Proposal is announced without having been first received by Spark RE) announcement, the Third Party or any Associate of that Third Party:
- (3) completes a Competing Proposal of a kind referred to in any of paragraphs 2, 3 or 4 of the definition of Competing Proposal; or
 - (4) without limiting clause 12.2(c)(3), acquires (either alone or in aggregate) a Relevant Interest in, or becomes the holder of, or otherwise acquires, directly or indirectly, at least 50% of the Spark Securities under a transaction that is or has become wholly unconditional; or
- (d) the Consortium Sub has terminated this deed pursuant to:
- (1) clause 14.1(a)(1);
 - (2) clause 14.1(b)(1); or
 - (3) clause 14.2(a),
- and the Transaction does not complete.

12.3 Payment of Reimbursement Fee

- (a) A demand by the Consortium Sub for payment of the Reimbursement Fee under clause 12.2 must:
- (1) be in writing;
 - (2) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (3) state the circumstances which give rise to the demand; and
 - (4) nominate an account in the name of the Consortium Sub into which Spark RE is to pay the Reimbursement Fee.
- (b) Spark RE must pay the Reimbursement Fee into the account(s) nominated by the Consortium Sub, without set-off or withholding, within five Business Days after receiving a demand for payment where the Consortium Sub is entitled under clause 12.2 to the Reimbursement Fee.

12.4 Basis of Reimbursement Fee

The Reimbursement Fee has been calculated to reimburse the Consortium Sub for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);



- (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Transaction; and
- (d) out of pocket expenses incurred by the Consortium Sub and the Consortium Sub's employees, advisers and agents in planning and implementing the Transaction,

and the parties agree that:

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

and Spark RE represents and warrants that it has received written legal advice from its legal advisers in relation to the operation of this clause 12.

12.5 Compliance with law

- (a) This clause 12 does not impose an obligation on Spark RE to pay the Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Reimbursement Fee:
 - (1) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
 - (2) is determined to be unenforceable or unlawful (including by virtue of it being a breach of the fiduciary or statutory duties of the Spark Board Members) by a court,

and the Consortium Sub will refund to Spark RE within five Business Days any amount in excess of its obligation under this clause that Spark RE has already paid to the Consortium Sub when that declaration or determination is made (unless otherwise required by the Takeovers Panel or a court). For the avoidance of doubt, any part of the Reimbursement Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by Spark RE.

- (b) The parties must not make or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 12.5(a).

12.6 Reimbursement Fee payable only once

Where the Reimbursement Fee becomes payable to the Consortium Sub under clause 12.2 and is actually paid to the Consortium Sub, the Consortium Sub cannot make any claim against Spark RE for payment of any subsequent Reimbursement Fee.

12.7 No Reimbursement Fee if Schemes Effective

Despite anything to the contrary in this deed, the Reimbursement Fee will not be payable to the Consortium Sub if the Schemes become Effective, notwithstanding the occurrence of any event in clause 12.2 and, if the Reimbursement Fee has already been paid it must be refunded by the Consortium Sub within five Business Days after the Schemes become Effective.



13 Reverse Reimbursement Fee

13.1 Background to Reverse Reimbursement Fee

- (a) The Consortium Sub and Spark RE acknowledge that, if they enter into this deed and the Schemes are subsequently not implemented, then Spark RE will incur significant costs, including those set out in clause 13.4.
- (b) In these circumstances, Spark RE has requested that provision be made for the payments outlined in clause 13.2, without which Spark RE would not have entered into this deed or otherwise agreed to implement the Schemes.

13.2 Reverse Reimbursement Fee triggers

Subject to this clause 13, the Consortium Sub must pay the Reverse Reimbursement Fee to Spark RE if Spark RE has terminated this deed pursuant to:

- (a) clause 14.1(a)(1); or
- (b) clause 14.2(b),

and the Transaction does not complete.

13.3 Payment of Reverse Reimbursement Fee

- (a) A demand by Spark RE for payment of the Reverse Reimbursement Fee under clause 13.2 must:
 - (1) be in writing;
 - (2) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (3) state the circumstances which give rise to the demand; and
 - (4) nominate an account in the name of Spark RE into which the Consortium Sub is to pay the Reverse Reimbursement Fee.
- (b) The Consortium Sub must pay the Reverse Reimbursement Fee into the account nominated by Spark RE, without set-off or withholding, within five Business Days after receiving a demand for payment where Spark RE is entitled under clause 13.2 to the Reverse Reimbursement Fee.

13.4 Basis of Reverse Reimbursement Fee

The Reverse Reimbursement Fee has been calculated to reimburse Spark RE for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) reasonable opportunity or deferral costs incurred in engaging in the Transaction in priority to other strategic alternatives;
- (c) costs of management and directors' time in planning and implementing the Transaction; and
- (d) out of pocket expenses incurred by Spark RE and its employees, advisers and agents in planning and implementing the Transaction,

and the parties agree that:



- (e) the costs actually incurred by Spark RE will be of such a nature that they cannot all be accurately ascertained; and
- (f) the Reverse Reimbursement Fee is a genuine and reasonable pre-estimate of those costs,

and the Consortium Sub represents and warrants that it has received written legal advice from its legal advisers in relation to the operation of this clause 13.

13.5 Compliance with law

- (a) This clause 13 does not impose an obligation on the Consortium Sub to pay the Reverse Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Reverse Reimbursement Fee:
 - (1) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
 - (2) is determined to be unenforceable or unlawful (including by virtue of it being a breach of the fiduciary or statutory duties of any directors of the Consortium Sub) by a court,and Spark RE will refund to the Consortium Sub within five Business Days any amount in excess of its obligation under this clause that the Consortium Sub has already paid to Spark RE when that declaration or determination is made (unless otherwise required by the Takeovers Panel or a court). For the avoidance of doubt, any part of the Reverse Reimbursement Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by the Consortium Sub.
- (b) The parties must not make or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 13.5(a).

13.6 Reverse Reimbursement Fee payable only once

Where the Reverse Reimbursement Fee becomes payable to Spark RE under clause 13.2 and is actually paid to Spark RE, Spark RE cannot make any claim against the Consortium Sub for payment of any subsequent Reverse Reimbursement Fee.

13.7 No Reverse Reimbursement Fee if Scheme Effective

Despite anything to the contrary in this deed, the Reverse Reimbursement Fee will not be payable to Spark RE if the Schemes become Effective, notwithstanding the occurrence of any event in clause 13.2 and, if the Reverse Reimbursement Fee has already been paid it must be refunded by Spark RE within five Business Days after the Schemes become Effective.

14 Termination

14.1 Termination

- (a) Either party may terminate this deed by written notice to the other party:
 - (1) other than in respect of a breach of either a Consortium Sub Representation and Warranty or a Spark RE Representation and



- Warranty (which are dealt with in clause 14.2), at any time before 8.00am on the Second Court Date, if the other party has materially breached this deed, the party entitled to terminate has given written notice to the party in breach of this deed setting out the relevant circumstances and stating an intention to terminate this deed, and the other party has failed to remedy the breach within five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given;
- (2) at any time before 8.00am on the Second Court Date if the Court or another Government Agency (including any other court) has taken any action permanently restraining or otherwise prohibiting or preventing the Transaction, or has refused to do anything necessary to permit the Transaction to be implemented by the End Date, and the action or refusal has become final and cannot be appealed or reviewed or the party, acting reasonably, believes that there is no realistic prospect of an appeal or review succeeding by the End Date (provided that the party purporting to terminate this deed has complied with its obligations in clause 3.4 to the extent applicable);
 - (3) in the circumstances set out in, and in accordance with, clause 3.4; (provided that the party purporting to terminate this deed has complied with its obligations in clause 3.4 to the extent applicable); or
 - (4) if the Effective Date for the Schemes has not occurred, or will not occur, on or before the End Date.
- (b) The Consortium Sub may terminate this deed by written notice to Spark RE at any time before 8.00am on the Second Court Date if:
- (1) after the date of this deed, a Spark Prescribed Occurrence or Spark Regulated Event occurs and the Consortium Sub has given written notice to Spark RE setting out the relevant circumstances and stating an intention to terminate this deed, and Spark RE has failed to remedy the breach within five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given; or
 - (2) any Spark Board Member:
 - (A) fails to recommend the Schemes;
 - (B) withdraws, adversely changes, adversely modifies or adversely qualifies their support of the Schemes or their recommendation that Spark Securityholders (other than Excluded Securityholders) vote in favour of the Schemes (other than as permitted by clause 5.5); or
 - (C) makes a public statement indicating that they no longer recommend the Transaction or they recommend, support or endorse another transaction (including any Competing Proposal but excluding a statement that no action should be taken by Spark Securityholders pending assessment of a Competing Proposal by the Spark Board or the completion of the matching right process set out in clause 11.6).
- (c) Spark RE may terminate this deed by written notice to the Consortium Sub at any time before 8.00am on the Second Court Date if the Spark Board or a majority of the Spark Board has changed, withdrawn, modified or qualified its recommendation as permitted under clause 5.5.



14.2 Termination for breach of representations and warranties

- (a) The Consortium Sub may, at any time before 8.00am on the Second Court Date, terminate this deed for material breach of a Spark RE Representation and Warranty only if:
- (1) the Consortium Sub has given written notice to Spark RE setting out the relevant circumstances and stating an intention to terminate or to allow the Schemes to lapse;
 - (2) the relevant breach continues to exist five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 14.2(a)(1); and
 - (3) the relevant breach is material in the context of the Schemes taken as a whole.
- (b) Spark RE may, at any time before 8.00am on the Second Court Date, terminate this deed for material breach of a Consortium Sub Representation and Warranty only if:
- (1) Spark RE has given written notice to the Consortium Sub setting out the relevant circumstances and stating an intention to terminate or to allow the Schemes to lapse;
 - (2) the relevant breach continues to exist five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 14.2(b)(1); and
 - (3) the relevant breach is material in the context of the Schemes taken as a whole.

14.3 Termination by agreement

This deed is terminable if agreed to in writing by the Consortium Sub and Spark RE.

14.4 Effect of termination

If this deed is terminated by either party under clauses 3.4, 14.1 or 14.2:

- (a) each party will be released from its obligations under this deed, except that this clause 14.4, and clauses 1, 7.5 to 7.9, 8.1, 8.2, 10, 12, 16, 17, 18 and 19 (except clause 19.9), will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this deed; and
- (c) in all other respects, all future obligations of the parties under this deed will immediately terminate and be of no further force and effect including any further obligations in respect of the Schemes.

14.5 Termination

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



14.6 No other termination

Neither party may terminate or rescind this deed except as permitted under clauses 3.4, 14.1, 14.2 or 14.3.

15 Spark RE limitation of liability

15.1 Capacity

Spark RE enters into this deed only in its capacity as responsible entity of the Spark Infrastructure Trust and in no other capacity. Subject to clause 15.3, Spark RE will not be personally liable under or in respect of this deed.

15.2 Limitation of liability

Subject to this clause 15:

- (a) a liability of Spark RE arising under or in connection with this deed is limited and can be enforced against Spark RE only to the extent to which it can be satisfied out of property of the Spark Infrastructure Trust and for which Spark RE is actually indemnified out of property of the Spark Infrastructure Trust. This limitation of Spark RE's liability extends to all liabilities and obligations of Spark RE in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed, any other document in connection with it, or the Spark Infrastructure Trust;
- (b) the parties other than Spark RE may not sue Spark RE in any capacity other than as responsible entity and trustee for the Spark Infrastructure Trust, including seeking the appointment of a receiver, a liquidator, an administrator or similar person to Spark RE or prove in any liquidation, administration or arrangement of or affecting Spark RE (except in each case in relation to property of the Spark Infrastructure Trust); and
- (c) Spark RE is not liable in contract, tort or otherwise to the Consortium Sub for any loss suffered in any way relating to the Spark Infrastructure Trust except to the extent that the Corporations Act imposes such liability.

15.3 Limitation of liability provisions do not apply

- (a) The limitation of liability provisions in this clause 15 will not apply to any obligation or liability of Spark RE to the extent that it is not satisfied because, under this deed or any other document in connection with it, or by operation of law, there is a reduction in the extent of Spark RE's indemnification out of the property of the Spark Infrastructure Trust as a result of Spark RE's fraud, negligence or breach of trust.
- (b) It is also acknowledged that a breach of an obligation imposed on, or a representation or warranty given by, Spark RE under or in connection with this deed or any other document in connection with it will not be considered a breach of trust by Spark RE unless Spark RE has acted with negligence, or without good faith, in relation to the breach.
- (c) No act or omission of Spark RE (including any related failure to satisfy its obligations under this document) shall be considered fraud, negligence or breach of trust of Spark RE for the purpose of clause 15.3(a) to the extent that



the act or omission was caused or contributed to by any failure by any other person to fulfil its obligations relating to Spark RE or by any other act or omission of any such other person.

15.4 Application

This clause 15 applies despite any other provisions of this deed or any principle of equity or law to the contrary.

16 Duty, costs and expenses

16.1 Stamp duty

The Consortium Sub:

- (a) must pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this deed or the Schemes or the steps to be taken under this deed or the Schemes; and
- (b) indemnifies Spark RE against any liability arising from its failure to comply with clause 16.1(a).

16.2 Costs and expenses

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

17 GST

- (a) Any consideration or amount payable under this deed, including any non-monetary consideration (as reduced in accordance with clause 17(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this deed, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 17(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 17(b):
 - (1) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as applicable;



- (2) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
- (3) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within seven days after receiving such notification, as applicable. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in this deed if an amount payable under or in connection with this deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term starting with a capital letter in this clause 17 that is not defined in this clause 17 has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

18 Notices

18.1 Form of Notice

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

- (a) in writing and in English; and
- (b) addressed to that party in accordance with the details nominated in Schedule 1 (or any alternative details nominated to the sending party by Notice).

18.2 How Notice must be given and when Notice is received

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

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then, other than in respect of any Notice given on, and before 8.00am on, the Second Court Date, the Notice will instead be regarded as given and received at the start of the following business hours period.



Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By pre paid post to the nominated address	At 9.00am (addressee's time) on the second day that is not a Saturday, Sunday or a public holiday or bank holiday in the place of receipt after the date of posting
By fax	On receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error.
By email to the nominated email address	The first to occur of: 1 the sender receiving an automated message confirming delivery; or 2 two hours after the time that the email was sent (as recorded on the device from which the email was sent) provided that the sender does not, within the period, receive an automated message that the email has not been delivered.

18.3 Notice must not be given by electronic communication

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

19 General

19.1 Governing law and jurisdiction

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

19.2 No merger

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



19.3 Invalidity and enforceability

- (a) If any provision of this deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 19.3(a) does not apply where enforcement of the provision of this deed in accordance with clause 19.3(a) would materially affect the nature or effect of the parties' obligations under this deed.

19.4 Waiver

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

The meanings of the terms used in this clause 19.4 are set out below.

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

19.5 Variation

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

19.6 Assignment of rights

- (a) A party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this deed without the prior written consent of the other party or as expressly provided in this deed.
- (b) A breach of clause 19.6(a) by a party shall be deemed to be a material breach for the purposes of clause 14.1(a)(1).
- (c) Clause 19.6(b) does not affect the construction of any other part of this deed.

19.7 Acknowledgement

Each party acknowledges that the remedy of damages may be inadequate to protect the interests of the parties for a breach of this deed and that either party is entitled to seek and obtain, without limitation, injunctive relief or specific performance if either party breaches, or threatens to breach this deed.

19.8 No third party beneficiary

This deed shall be binding on and inure solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this deed is intended to or shall confer on any other person, other than:



- (a) the Consortium Indemnified Parties and the Spark Indemnified Parties, in each case to the extent set forth in clause 7 and clause 8; and
- (b) OTPP, KKR Asia and PSP to the extent set forth in clause 11.8, any third party beneficiary rights.

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

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

19.10 Entire agreement

This deed (including the documents in the Attachments to it), the Confidentiality Agreement and any other document specified by the parties for the purposes of this clause 19.10 state all the express terms agreed by the parties in respect of their subject matter. They supersede all prior discussions, negotiations, understandings and agreements in respect of their subject matter.

19.11 Counterparts

This deed may be executed in any number of counterparts. Subject to applicable law, a counterpart may be executed in hard copy or electronic form.

19.12 Relationship of the parties

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

19.13 Remedies cumulative

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

19.14 Exercise of rights

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

19.15 Withholding

- (a) If the Consortium Sub is required by Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (**Subdivision 14-D**) to pay amounts to the ATO in respect of the acquisition of Spark Securities from certain Scheme



Securityholders, the Consortium Sub is permitted to deduct the relevant amounts from the payment of the Scheme Consideration to those Scheme Securityholders, and remit such amounts to the ATO. The aggregate sum payable to Scheme Securityholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Scheme Securityholders shall be taken to be in full and final satisfaction of the amounts owing to those Scheme Securityholders.

- (b) Spark RE agrees that the Consortium Sub may approach the ATO to obtain clarification as to the application of Subdivision 14-D to the Transaction and will provide all information and assistance that the Consortium Sub reasonably requires in making that approach. The Consortium Sub agrees:
- (1) to provide Spark RE a reasonable opportunity to review the form and content of all materials to be provided to the ATO, to take into account Spark RE's reasonable comments on those documents and more generally in relation to the Consortium Sub's engagement with the ATO in connection with the application of Subdivision 14-D to the Transaction; and
 - (2) not to contact any Spark Securityholders in connection with the application of Subdivision 14-D to the Transaction without Spark RE's prior written consent.
- (c) The parties agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the ATO following the process mentioned in clause 19.15(b). The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation which may include, without limitation, making amendments to this deed, the Schemes and the Deed Poll to ensure that relevant representations are obtained from Scheme Securityholders.



Schedules

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Schedule 1

Notice details

Consortium Sub	Pika Bidco Pty Ltd
Address	c/- TMF Corporate Services (Aust) Pty Limited, Level 16, 201 Elizabeth Street, Sydney, NSW 2000
Attention	Andrew Jennings Bruce Crane Sandiren Curthan
Email	Andrew.Jennings@kkcr.com Bruce_Crane@otpp.com SCurthan@investpsp.com
<i>With a copy to:</i>	Guy.Alexander@allens.com.au Kate.Towey@allens.com.au Charles.Ashton@allens.com.au

Spark RE	Spark Infrastructure RE Limited as responsible entity of the Spark Infrastructure Trust
Address	Level 29 225 George Street Sydney NSW 2000
Attention	Company Secretary
Email	Jenny.Faulkner@sparkinfrastructure.com
<i>With a copy to:</i>	Philip Podzebenko Email: Philip.Podzebenko@hsf.com



Schedule 2

Definitions and interpretation

1.1 Definitions

Term	Meaning
ASIC	the Australian Securities and Investments Commission.
Additional Consideration	where the Implementation Date occurs on or after 15 February 2022, \$0.01 <i>plus</i> \$0.0003333 for each day after 15 February 2022 that has elapsed by the date on which the Implementation Date occurs.
Affiliate	an entity will be an Affiliate of another entity if it Controls the other entity, the other entity Controls the first entity, or both entities are under common Control.
Anti-Corruption Laws	any anti-bribery or anti-corruption Laws (including Laws that prohibit the corrupt payment, giving, offer, promise or authorisation of the payment or transfer of anything of value (including gifts or entertainment), directly or indirectly, to any Government Official, commercial entity or any other person to obtain a business advantage) applicable to Spark RE, its Related Entities, the Asset Companies, and each of their respective operations from time to time, including: 1 the U.S. Foreign Corrupt Practices Act of 1977; 1 the United Kingdom Bribery Act of 2010; 2 anti-bribery legislation promulgated by the European Union and implemented by its member states; 3 legislation adopted in furtherance of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and 4 any similar Laws in any other jurisdiction in which any entity of the Spark Group operates, in each case as amended from time to time.
Anti-Money Laundering Laws	any anti-money laundering-related Laws and codes of practice applicable to the Spark RE, its Related Entities, the Asset Companies, and each of their respective operations from time to time, including: 1 the EU Anti-Money Laundering Directives and any laws, decrees, administrative orders, circulars, or instructions implementing or interpreting the same; and



Term	Meaning
	2 the applicable financial recordkeeping and reporting requirements of the U.S. Currency and Foreign Transaction Reporting Act of 1970, as amended.
Asset Company	1 (TransGrid): - a NSW Electricity Networks Operations Holdings Pty Ltd; - b NSW Electricity Networks Operations Holdings Trust; - c NSW Electricity Networks Assets Holdings Pty Ltd; and - d NSW Electricity Networks Assets Holdings Trust, and each entity from time to time Controlled by any one or more of the entities referred to in paragraphs a, b, c or d above; 2 (VPN) Victoria Power Networks Pty Ltd and each entity from time to time that it Controls; and 3 (SAPN) SA Power Networks Partnership and each entity from time to time that it Controls.
Associate	has the meaning set out in section 12 of the Corporations Act, as if subsection 12(1) of the Corporations Act included a reference to this deed and Spark Infrastructure Trust was the designated body.
ASX	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
ATO	the Australian Taxation Office.
Business Day	a business day as defined in the Listing Rules and which is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, Hong Kong or Toronto.
Claim	any claim, demand, legal proceedings or cause of action (including any claim, demand, legal proceedings or cause of action: 1 based in contract, including breach of warranty; 2 based in tort, including misrepresentation or negligence; 3 under common law or equity; or 4 under statute, including the Australian Consumer Law (being Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) (CCA)) or Part VI of the CCA, or like provision in any state or territory legislation), in any way relating to this deed or the Transaction, and includes a claim, demand, legal proceedings or cause of action arising under an indemnity in this deed.



Term	Meaning
Competing Proposal	any proposal, agreement, arrangement or transaction, which, if entered into or completed, would mean a Third Party (either alone or together with any Associate) would: 1 directly or indirectly acquire a Relevant Interest in, or have a right to acquire, a legal, beneficial or economic interest in, or control of, 20% or more of the Spark Securities; 2 acquire Control of Spark Infrastructure Trust or of any Spark Group Member; 3 directly or indirectly acquire or become the holder of, or otherwise acquire or have a right to acquire, a legal, beneficial or economic interest in, or control of, all or a material part of Spark RE's business or assets or the business or assets of the Spark Group; 4 otherwise directly or indirectly acquire or merge, or be involved in an amalgamation or reconstruction (as those terms are used in section 413(1) of the Corporations Act), with Spark Infrastructure Trust; or 5 require Spark RE to abandon, or otherwise fail to proceed with, the Transaction, whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement, recapitalisation, refinancing or other transaction or arrangement. For the avoidance of doubt, each successive material modification or variation of any proposal, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.
Condition Precedent	each of the conditions set out in clause 3.1.
Confidentiality Agreement	the confidentiality agreement between Spark RE, KKR Asia and OTPP dated 15 July 2021, to which PSP acceded on 10 August 2021.
Consortium Arrangements	the consortium arrangements between KKR Asia, OTPP and PSPIB and their implementation of the Schemes and the Transaction.
Consortium Group	the Consortium Sub, each Consortium Member and each Consortium Member's Related Entities, and a reference to a Consortium Group Member or a member of the Consortium Group is to any of the Consortium Sub, any Consortium Member and any of the Consortium Members' Related Entities.
Consortium Indemnified Parties	the Consortium Sub, each Consortium Group Member and their respective directors, officers and employees.



Term	Meaning
Consortium Information	information regarding the Consortium Group provided by the Consortium Sub to Spark RE in writing for inclusion in the Scheme Booklet, including: 1 information about the Consortium Sub, other Consortium Group Members, the businesses of the Consortium Group, the Consortium Sub's interests and dealings in Spark Securities, the Consortium Sub's intentions for Spark RE and Spark RE's employees, and funding for the Schemes; and 2 any other information required under the Corporations Act, Corporations Regulations or RG 60 to enable the Scheme Booklet to be prepared that the parties agree is 'Consortium Information' and that is identified in the Scheme Booklet as such. For the avoidance of doubt, the Consortium Information excludes the Spark Information, the Independent Expert's Report and any description of the taxation effect of the Transaction on Scheme Securityholders prepared by an external adviser to Spark RE.
Consortium Members	1 PikaK Bidco Pte. Ltd. a company incorporated in Singapore (UEN 202128369W); 2 2857980 Ontario Limited a company incorporated in Ontario, Canada (Corporation Number 002857980); and 3 Perpetual Corporate Trust Limited ACN 000 341 533 as trustee of the PSPIB Power Trust.
Consortium Representations and Warranties	the representations and warranties of the Consortium Sub set out in Schedule 3.
Consultation Notice	has the meaning given in clause 3.4(a).
Control	has the meaning given in section 50AA of the Corporations Act. Also, for these purposes: 1 a trust will Control another entity if its trustee Controls the entity (disregarding for these purposes the operation of section 50AA(4) of the Corporations Act) in its capacity as trustee of the trust; 2 a partnership will Control another entity if a partner (including a general partner) Controls the entity (disregarding for these purposes the operation of section 50AA(4) of the Corporations Act) in its capacity as partner; and 3 a fund or investment vehicle will Control another entity if the responsible entity or manager of the fund or investment vehicle Controls the entity (disregarding for these purposes the operation of section 50AA(4) of the Corporations Act) in its capacity as responsible entity or manager of the fund or investment vehicle.



Term	Meaning
Corporations Act	the <i>Corporations Act 2001</i> (Cth), as modified or varied by ASIC.
Corporations Regulations	the <i>Corporations Regulations 2001</i> (Cth).
Court	the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed to in writing by the Consortium Sub and Spark RE.
Creditors' Scheme	the scheme of arrangement under Part 5.1 of the Corporations Act between Spark RE and the Scheme Securityholders (as holders of Spark Notes), the form of which is attached as Attachment 2, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by the Consortium Sub and Spark RE.
Creditors' Scheme Meeting	the meeting of Spark Securityholders, as holders of Spark Notes, ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on the Creditors' Scheme, and includes any meeting convened following any adjournment or postponement of that meeting.
Debt Commitment Letters	the binding, credit-approved, executed commitment letter(s) and accompanying term sheet from certain financial institutions addressed to the Consortium Sub and dated on or before the date of this deed.
Deed Poll	a deed poll in the form of Attachment 3 (or in such other form as may be agreed to by Spark RE and the Consortium Sub) under which the Consortium Sub covenants in favour of the Scheme Securityholders to perform the obligations attributed to the Consortium Sub under the Schemes.
Director Spark Security	any Spark Security: 1 held by or on behalf of a Spark Board Member; or 2 listed as an indirect interest in the latest Appendix 3X or Appendix 3Y lodged by Spark RE with ASX in respect of each Spark Board Member.
Disclosure Letter	a letter identified as such provided by Spark RE to the Consortium Sub and countersigned by the Consortium Sub before entry into this deed.



Term	Meaning
Disclosure Materials	1 the documents and information contained in the data room made available by Spark RE to the Consortium Sub and its Related Persons as at 9pm on 20 August 2021, the index of which has been initialled by, or on behalf of, the parties for identification; 2 written responses from Spark RE and its Related Persons to requests for further information made by the Consortium Sub and its Related Persons received as at 9pm on 20 August 2021 (including for clarity verbal responses provided to the Consortium Group's advisers on 16 August 2021 in response to the document entitled Spark Infrastructure – Compliance Diligence Questions dated 8 August 2021); and 3 the Disclosure Letter.
Effective	when used in relation to the Schemes, all the following events taking place: 1 the Spark Infrastructure Trust Supplemental Deed taking effect pursuant to section 601GC(2) of the Corporations Act; and 2 the coming into effect, under subsection 411(10) of the Corporations Act, of the order of the Court made under paragraph 411(4)(b) of the Corporations Act in relation to the Creditors' Scheme.
Effective Date	the date on which the Schemes become Effective.
End Date	24 May 2022, or such other later date as agreed in writing by the parties.
Equity Commitment Letters	the binding, executed commitment letter(s) provided on or before the date of this deed in a form acceptable to the Consortium Sub and Spark RE pursuant to which each Consortium Member (or a Related Entity of a Consortium Member) agrees it will cause the Consortium Sub to receive by way of one or more direct or indirect capital contributions (including by way of subscription of a direct or indirect subscription of shares in Pika Holdco and which contributions may take the form of ordinary equity, shareholder loans, preferred equity or other securities).
Excluded Securityholder	any Spark Securityholder who is a member of the Consortium Group or any Spark Securityholder who holds any Spark Securities on behalf of, or for the benefit of, any member of the Consortium Group and does not hold Spark Securities on behalf of, or for the benefit of, any other person.
Exclusivity Period	the period from and including the date of this deed to the earlier of: 1 the date on which Spark RE gives notice to the Consortium Sub that it has determined that a Competing Proposal is a Superior Proposal having complied with clause 11.6; 2 the date of termination of this deed;



Term	Meaning
	3 the End Date; and 4 the Effective Date.
Fairly Disclosed	a reference to 'Fairly Disclosed' means disclosed to the Consortium Sub or any of its Related Persons, to a sufficient extent, and in sufficient detail, so as to enable a reasonable bidder (or one of its Related Persons) experienced in transactions similar to the Transaction and experienced in a business similar to any business conducted by the Spark Group, to identify the nature and scope of the relevant matter, event or circumstance (including, in each case, that the potential financial effect of the relevant matter, event or circumstance was reasonably ascertainable from the information disclosed).
Final Distribution	the distribution contemplated by clause 6.2(b).
Financial Adviser	any financial adviser retained by a party in relation to the Transaction from time to time.
Financial Indebtedness	any debt or other monetary liability (whether actual or contingent) in respect of monies borrowed or raised or any financial accommodation including under or in respect of any: 1 bill, bond, debenture, note or similar instrument; 2 acceptance, endorsement or discounting arrangement; 3 guarantee; 4 finance or capital lease; 5 agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service; or 6 obligation to deliver goods or provide services paid for in advance by any financier.
First Court Date	the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Creditors' Scheme Meeting and to seek the First Judicial Advice is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.
First Judicial Advice	confirmation from the Court under section 63 of the <i>Trustee Act 1925</i> (NSW) that: 1 Spark RE would be justified in convening the Trust Scheme Meeting for the purposes of considering the Trust Scheme Resolutions; and 2 subject to the Spark Securityholders passing the Trust Scheme Resolutions, Spark RE would be justified in proceeding on the basis that amending the Spark Infrastructure Trust Constitution as set out in the Spark Infrastructure Trust Supplemental Deed would be within the powers of alteration conferred by the Spark



Term	Meaning
	Infrastructure Trust Constitution and section 601GC of the Corporations Act.
Government Agency	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.
Government Official	includes any officer, employee or other person acting in an official capacity on behalf of: 1 any Government Agency or any department or agency of a Government, including elected officials, judicial officials, civil servants and military personnel, children, spouses, siblings or parents of a Government Official; 2 any public international organisation, such as the World Bank; 3 any company or business that is owned or Controlled by a Government Agency; and 4 any political party, as well as candidates for political office.
Implementation Date	the tenth Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as the parties agree in writing.
Independent Expert	the independent expert in respect of the Schemes appointed by Spark RE.
Independent Expert's Report	the report to be issued by the Independent Expert in connection with the Schemes, setting out the Independent Expert's opinion whether or not the Transaction is in the best interests of Spark Securityholders and the reasons for holding that opinion.
Insolvency Event	in relation to an entity: 1 the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity (other than where the order is set aside within 14 days); 2 a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets; 3 the entity executing a deed of company arrangement; 4 the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;



Term	Meaning
	5 the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation); 6 the entity being deregistered as a company or otherwise dissolved; or 7 something having a substantially similar effect to paragraphs 1 to 6 above happens in connection with that entity under the Laws of any jurisdiction.
Judicial Advices	1 First Judicial Advice; and 2 Second Judicial Advice.
KKR Asia	KKR Asia Limited.
Laws	statutes, enactments, acts of legislature or the parliament, laws, regulations, ordinances, notifications, rules, judgments, orders, decrees, by-laws, approvals from the concerned authority (including a Government Agency), resolutions, directives, guidelines, policies, requirements, or other governmental restrictions or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law of any of the foregoing, by any concerned Government Agency having jurisdiction over the matter in question.
Listing Rules	the official listing rules of ASX.
Material Contract	any contract, agreement, arrangement or commitment which contains a change of control provision which will or would reasonably be likely to be triggered by the transactions contemplated under this deed and which would constitute a Spark Material Adverse Change if triggered, but for the operation of paragraph 3 of that definition.
New Stapled Security	has the meaning given in Schedule 6.
Non-Public Spark Information	has the meaning given in clause 11.2(a).
Operating Rules	the official operating rules of ASX.
OTPP	Ontario Teachers' Pension Plan Board.
Pika Holdco	Pika Holdco Pty Ltd ACN 652 787 150.
PSP	Public Sector Pension Investment Board.



Term	Meaning
RG 60	Regulatory Guide 60 issued by ASIC in September 2020.
Registered Address	in relation to a Spark Securityholder, the address shown in the Spark Security Register as at the Scheme Record Date.
Regulator's Draft	the draft of the Scheme Booklet in a form which is provided to ASIC for approval pursuant to subsection 411(2) of the Corporations Act.
Regulatory Approval	an approval or consent specified in clause 3.1(a), clause 3.1(b) and clause 3.1(c).
Reimbursement Fee	\$52 million.
Related Entity	1 in relation to Spark RE: - a Spark Infrastructure Trust; - b Spark Infrastructure Holdings No. 1 Pty Ltd; - c Spark Infrastructure Holdings No. 2 Pty Ltd; - d Spark Infrastructure Holdings No. 3 Pty Ltd; - e Spark Infrastructure RE Limited, in its personal capacity; and - f Spark Renewables Pty Limited, and each entity, from time to time, Controlled by any one or more of the entities referred to in paragraphs a, b, c, d, e or f above; and 2 in relation to the Consortium Sub and any Consortium Member: - a each Affiliate of the Consortium Sub and the Consortium Members (including KKR Asia, OTPP and PSPIB); - b Pika Holdco and Consortium Sub; and - c each trust, partnership, fund, equity investor, co-investor, other investment vehicle and investment mandate from time to time managed or advised by any of KKR Asia, OTPP or PSP or any Affiliate of any of KKR Asia, OTPP or PSP, (excluding any investee or portfolio entity, being a business in which KKR Asia, OTPP or PSP or an entity referred to in paragraph c invests in in the ordinary course of its private equity investment operations).
Related Person	1 in respect of a party or its Related Entities, each director, officer, employee, adviser, agent or representative of that party or Related Entity; and 2 in respect of a Financial Adviser, each director, officer, employee or contractor of that Financial Adviser.



Term	Meaning
Related Steps	the steps set out in Schedule 6.
Relevant Interest	has the meaning given in sections 608 and 609 of the Corporations Act.
Reverse Reimbursement Fee	\$52 million.
Sanctioned Person	a person that is: 1 the subject or target of Sanctions (including any person that is designated on the list of "Specially Designated Nationals and Blocked Persons" administered by the U.S. Treasury Department's Office of Foreign Assets Control); 2 located or resident in or organised under the laws of a country or territory which is the subject of country- or territory-wide Sanctions (currently Cuba, Iran, North Korea, Syria, or the Crimea region of Ukraine); or 3 any person with whom dealings are restricted or prohibited by Sanctions as a result of a relationship of ownership or control with a person or entity listed in any of the foregoing.
Sanctions	all trade, economic and financial sanctions Laws administered, enacted or enforced from time to time by: 1 Canada; 2 the United States (including without limitation the Department of Treasury, Office of Foreign Assets Control and the United States Department of State); 3 the European Union and enforced by its member states; 4 the United Nations; 5 the United Kingdom (including without limitation Her Majesty's Treasury); or 6 any other similar Government Agency with regulatory authority over Spark RE or its Related Entities from time to time.
Schemes	1 the Trust Scheme; and 2 the Creditors' Scheme.
Scheme Booklet	the scheme booklet to be prepared by Spark RE in respect of the Transaction in accordance with the terms of this deed (including clause 5.2(a)) to be despatched to the Spark Securityholders and which must include or be accompanied by: 1 a copy of the Trust Scheme; 2 a copy of the Creditors' Scheme;



Term	Meaning
	3 an explanatory statement complying with the requirements of the Corporations Act, the Corporations Regulations and RG 60; 4 the Independent Expert's Report; 5 a copy or summary of this deed; 6 a copy of the executed Deed Poll; 7 a notice of meeting for the Trust Scheme; 8 a notice of meeting for the Creditors' Scheme; and 9 a proxy form.
Scheme Consideration	the consideration to be provided by the Consortium Sub to each Scheme Securityholder for the transfer to the Consortium Sub of each Scheme Security, being for each Spark Security held by a Scheme Securityholder as at the Scheme Record Date: 1 an amount of \$2.95; <i>less</i> 2 the cash amount of any distributions to which Scheme Securityholders become entitled on or before the Implementation Date, including the first half interim distribution for 2021 of \$0.0625 per Spark Security announced by Spark RE on 1 July 2021, any Special Distribution and any Final Distribution; <i>plus</i> 3 the amount of any Additional Consideration.
Scheme Record Date	7.00pm on the fifth Business Day after the Effective Date, or such other time and date as the parties agree in writing.
Scheme Securities	all Spark Securities held by the Scheme Securityholders as at the Scheme Record Date and, from the time of the distribution of the A class shares to Scheme Securityholders under the Related Steps, is a reference to the New Stapled Securities held by the Scheme Securityholders as at that time.
Scheme Securityholder	a holder of Spark Securities recorded in the Spark Security Register as at the Scheme Record Date (other than an Excluded Securityholder).
Scheme Units	all Spark Units held by the Scheme Securityholders as at the Scheme Record Date.
Second Court Date	the first day on which an application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Creditors' Scheme and to seek the Second Judicial Advice is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application or appeal is heard.



Term	Meaning
Second Judicial Advice	confirmation from the Court under section 63 of the <i>Trustee Act 1925</i> (NSW) that, the Spark Securityholders having approved the Trust Scheme Resolutions by the requisite majorities, Spark RE would be justified in implementing the Trust Scheme Resolutions, giving effect to the provisions of the Spark Infrastructure Trust Constitution (as amended by the Spark Infrastructure Trust Supplemental Deed) and in doing all things and taking all necessary steps to put the Trust Scheme into effect.
Security Interest	has the meaning given in section 51A of the Corporations Act.
Senior Facility Agreements	each the following A\$ revolving credit facility agreements maturing February 2023: 1 the A\$40 million facility agreement between, amongst others, Spark Infrastructure (Victoria) Pty Limited (Borrower) and Commonwealth Bank of Australia; 2 the A\$40 million facility agreement between, amongst others, the Borrower and China Construction Bank Corporation, Sydney Branch; 3 the A\$110 million facility agreement between, amongst others, the Borrower and Mizuho Bank, Ltd.; 4 the A\$70 million facility agreement between, amongst others, the Borrower and MUFG Bank, Ltd.; 5 the A\$70 million facility agreement between, amongst others, the Borrower and Sumitomo Mitsui Banking Corporation, Sydney Branch; and 6 the A\$70 million facility agreement between, amongst others, the Borrower and Westpac Banking Corporation.
Spark Board	the board of directors of Spark RE and a Spark Board Member means any director of Spark RE comprising part of the Spark Board.
Spark Group	Spark Infrastructure Trust and each of its Related Entities, and a reference to a Spark Group Member or a member of the Spark Group is to Spark Infrastructure Trust or any of its Related Entities.
Spark Indemnified Parties	1 Spark Infrastructure Trust; 2 each Related Entity of Spark RE or of Spark Infrastructure Trust, and their respective directors, officers and employees.
Spark Information	information regarding the Spark Group prepared by Spark RE for inclusion in the Scheme Booklet that explains the effect of the Schemes and sets out the information prescribed by the Corporations Act and the Corporations Regulations, and any other information that is material to the making of a decision by Spark Securityholders whether or not to vote in favour of the Schemes, being information that is within the knowledge of each of the Spark Board Members.



Term	Meaning
	For the avoidance of doubt, the Spark Information excludes the Consortium Information, the Independent Expert's Report and any description of the taxation effect of the Transaction on Scheme Securityholders prepared by an external adviser to Spark RE.
Spark Infrastructure Trust	the Spark Infrastructure Trust ARSN 116 870 725.
Spark Infrastructure Trust Constitution	the constitution establishing the Spark Infrastructure Trust as amended from time to time.
Spark Infrastructure Trust Supplemental Deed	a deed poll under which Spark RE will amend the Spark Infrastructure Trust Constitution to effect the Trust Scheme.
Spark Material Adverse Change	an event, change, condition, matter, circumstance or thing occurring after the date of this deed (each a Specified Event) which, whether individually or when aggregated with all such events, changes, conditions, matters, circumstances or things that have occurred or are reasonably likely to occur, has had or would be considered reasonably likely to have: 1 the effect of a diminution in the value of the consolidated net assets of the Spark Group, taken as a whole, by at least \$172,000,000 against what it would reasonably have been expected to have been but for such Specified Event; or 2 the effect of a diminution in the Adjusted Look-Through Earnings of the Spark Group (as defined below), taken as a whole, by at least \$85,000,000 for either the financial year ending 31 December 2021 or the financial year ending 31 December 2022 against what it would reasonably have been expected to have been but for such Specified Event, other than (in each case) any events, changes, conditions, matters, circumstances or things: 3 arising out of the announcement of the Transaction or the Schemes (including any loss of or adverse change in the relationship of Spark Group Members with their respective employees, customers, partners (including joint venture partners), creditors or suppliers as at the date of this deed, including the loss of any contract and including any consequences of a change of control provision in a contract being triggered); 4 required or expressly permitted by this deed, the Schemes or the transactions contemplated by either; 5 that are Fairly Disclosed in the Disclosure Materials; 6 agreed to in writing by the Consortium Sub; 7 arising as a result of any generally applicable change in law (including subordinate legislation), regulation, directions, orders, accounting standards or principles or governmental policy or the interpretation of any of them;



Term	Meaning
	8 arising from changes in economic or business conditions that impact on Australian business generally (including interest rates, general economic, political or business conditions, including material adverse changes or major disruptions to, or fluctuations in, domestic or international financial markets); 9 constituted by or arising from any determinations, announcements or rulings by: – the Australian Taxation Office; – the Australian Energy Regulator, Australian Energy Market Commission, Australian Energy Market Operator or Energy Security Board; or – any State government or other Government Agency in relation to regulated electricity networks; 10 arising from any act of terrorism, outbreak or escalation of war (whether or not declared), major hostilities, civil unrest or outbreak or escalation of any disease epidemic or pandemic (including the outbreak, escalation or any impact of, or recovery from, the Coronavirus or COVID-19 pandemic); 11 arising from any act of God, natural disaster, lightning, storm flood, bushfire, earthquake, explosion, cyclone, tidal wave, landslide, adverse weather conditions on or after the date of this deed; 12 directly relating to costs and expenses incurred by Spark RE associated with the Scheme process or the Transaction, including all fees payable to external advisers of Spark RE, to the extent such amounts are Fairly Disclosed in the Disclosure Materials; or 13 that Spark RE Fairly Disclosed in an announcement made by Spark RE to ASX, or a publicly available document lodged by it or a Related Entity of Spark RE with ASIC, before the date of this deed. For purposes of this definition, the Adjusted Look-Through Earnings of the Spark Group is 'EBITDA' plus 'Total Spark Net Costs' (but excluding from Total Spark Net Costs 'interest received', 'interest paid' and 'income tax paid'), calculated on a consistent basis with the way those amounts were calculated in the 'Look Through Operating Cash Flow' on page 4 of the "Five Year Plan 2021-25" (as included as document 02.02.01 in the data room in the Disclosure Materials). By way of illustration, Adjusted Look-Through Earnings of the Spark Group for 2020 forecast in that document was \$848.4 million.
Spark Note	a loan note issued by Spark RE under the terms of the Spark Note Trust Deed
Spark Note Trust Deed	the Spark Infrastructure Note Trust Deed dated 9 November 2005, as amended by: 1 Note Trust Deed - Supplemental Deed No. 1 (Terms Of Issue) dated 25 October 2010;



Term	Meaning
	2 Note Trust Deed - Supplemental Deed No. 2 (Restructure Effective Date Amendments) dated 8 November 2010; and 3 Note Trust Deed - Supplemental Deed No. 3 (Restructure Implementation Date Amendments) dated 10 December 2010, and as rectified by deed of rectification dated 31 March 2011.
Spark Performance Right	an entitlement to receive a Spark Security, granted under the Spark Infrastructure Equity Incentive Plan, being the performance rights identified in Schedule 5.
Spark Prescribed Occurrence	other than as: 1 required or permitted by this deed, the Schemes or the transactions contemplated by either or the Related Steps; 2 Fairly Disclosed in the Disclosure Materials, in an announcement made by Spark RE to ASX, or in a publicly available document lodged by a Spark Group Member with ASIC, before the date of this deed; or 3 agreed to in writing by the Consortium Sub, the occurrence of any of the following: 4 Spark Infrastructure Trust converting all or any of its units into a larger or smaller number of units; 5 Spark Infrastructure Trust reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its Spark Securities; 6 Spark Infrastructure Trust redeeming, buying back or repurchasing Spark Securities or resolving to approve or enter into an agreement to do any of those things; 7 a member of the Spark Group issuing securities, or granting a performance right or option over its securities, or agreeing to make such an issue or grant such a performance right or option, other than: - a an issue or grant (or an agreement to issue or grant) to another member of the Spark Group; or b. the vesting of rights under the Spark Performance Rights, or the issue of Spark Securities in respect of such vested performance rights, including, for the avoidance of doubt, any issue of Spark Securities pursuant to the Spark Infrastructure Distribution Reinvestment Plan whether or not the issues of Spark Securities under such plan was Fairly Disclosed in the Disclosure Materials; 8 a member of the Spark Group issuing or agreeing to issue securities convertible into shares or units (as applicable), other than an issue (or agreement to issue) to another member of the Spark Group; 9 Spark Infrastructure Trust agrees to pay, declares, pays or makes, or incurs a liability to pay or make, a distribution of income, profits, assets or capital to any person, other than the



Term	Meaning
	interim distribution announced on 1 July 2021, the Final Distribution or the Special Distribution or pursuant to the Related Steps; 10 a member of the Spark Group disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property; 11 a member of the Spark Group granting a Security Interest, or agreeing to grant a Security Interest, in the whole, or a substantial part, of its business or property other than a lien which arises by operation of law or legislation securing an obligation that is not yet due; 12 an Insolvency Event occurs in relation to a member of the Spark Group; or 13 Spark Infrastructure Trust making any change to its constitution or the Spark Note Trust Deed.
Spark Registry	Boardroom Pty Limited ABN 14 003 209 836.
Spark Regulated Event	other than as: 1 required or expressly permitted by this deed, the Schemes or the transactions contemplated by either; 2 Fairly Disclosed in the Disclosure Materials, in an announcement made by Spark RE to ASX, or in a publicly available document lodged by it or a Related Entity of Spark RE with ASIC, before the date of this deed; or 3 agreed to in writing by the Consortium Sub, the occurrence of any of the following: 4 a member of the Spark Group: a. acquiring, leasing or disposing of; b. agreeing, offering or proposing to acquire, lease or dispose of; or c. announcing or proposing a bid, or tendering, for, any business, entity or undertaking, the value of which exceeds \$25 million (individually or in the aggregate); 5 a member of the Spark Group entering into a contract or commitment materially restraining a member of the Spark Group from competing with any person or conducting activities in any material market; 6 a member of the Spark Group entering into any contract or commitment (other than in respect of capital expenditure, Financial Indebtedness, an acquisition, lease or disposal of a business, entity or undertaking, or provision of financial accommodation) requiring payments (excluding payments between Spark Group Members) by the Spark Group in excess of \$25 million (individually or in the aggregate), other than: a. any payment required by law;



Term	Meaning
	b. funding commitments in respect of Project EnergyConnect or any Integrated System Plan project for which TransGrid requires or seeks funding from the Spark Group; or c. any power purchase agreement in relation to the Spark Group's renewables business under which payments by the relevant Spark Group Member that is party to the agreement over the term of the agreement are calculated (in accordance with the methodology set out in the Disclosure Letter) to have a net present value as at the date the agreement is entered into of less than \$25 million, provided that: - Spark RE has consulted with the Consortium Sub in good faith in relation to the entry into such power purchase agreement, including providing all material details of such power purchase agreement, prior to entry into the power purchase agreement; and - the power purchase agreement is entered into in connection with a renewables project that is either existing as at the date of this deed, or a proposed renewables project that has been disclosed in the Disclosure Materials;
7	a member of the Spark Group agreeing to incur or incurring capital expenditure of more than \$25 million (individually or in the aggregate);
8	a member of the Spark Group incurring any Financial Indebtedness of an amount in excess of \$50 million (individually or in the aggregate), other than Financial Indebtedness that is: a. incurred by one member of the Spark Group to another; b. incurred to meet funding commitments in respect of Project EnergyConnect or any Integrated System Plan project for which TransGrid requires or seeks funding from the Spark Group; or c. incurred to pay the interim distribution announced on 1 July 2021, the Final Distribution or the Special Distribution, and in respect of Financial Indebtedness incurred under the Senior Facility Agreements, only the net increase in Financial Indebtedness drawn under those agreements from the date of this deed (disregarding drawings referred to in paragraphs b and c above) will be taken into account in calculating Financial Indebtedness for purposes of this paragraph (such that redraws of amounts repaid under the Senior Facility Agreements will be disregarded);
9	a member of the Spark Group: a. waiving any material third party default where the financial impact on the Spark Group will be in excess of \$5 million (individually or in the aggregate); or b. accepting as a compromise of a matter less than the full compensation due to a member of the Spark Group where the financial impact of the compromise on the Spark Group is more than \$5 million (individually or in the aggregate);
10	a member of the Spark Group providing financial accommodation other than to members of the Spark Group



Term	Meaning
	(irrespective of what form of Financial Indebtedness that accommodation takes) in excess of \$25 million (individually or in the aggregate) other than any financial accommodation provided from to time to TransGrid, Victoria Power Networks or South Australia Power Networks, and other than performance guarantees in relation to power purchase agreements referred to in paragraph 6c above;
11	a member of the Spark Group entering into any agreement, arrangement or transaction with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity derivatives or options, but not including a power purchase agreement referred to in paragraph 6c above) or similar instruments;
12	a member of the Spark Group entering into, or resolving to enter into, a transaction with any related party of the Spark Infrastructure Trust (other than a related party which is a member of the Spark Group), as defined in section 228 of the Corporations Act (as that section is modified by section 601LA of the Corporations Act);
13	a member of the Spark Group: a. entering into (other than for the purposes of replacing an existing agreement or arrangement on a materially consistent basis) or materially altering, varying or amending any employment, consulting, severance or similar agreement or arrangement with one or more of its officers, directors or senior executives; b. paying or agreeing to pay, any bonus, retention bonus, benefit or similar to any director or employee of the Spark Group in connection with the Schemes or Transaction; or c. accelerating or otherwise materially increasing compensation or benefits for any of the above, in each case other than pursuant to: d. contractual arrangements in effect on the date of this deed and which are contained in the Disclosure Materials; or e. Spark RE's policies and guidelines in effect on the date of this deed and which are contained in the Disclosure Materials;
14	a Spark Group Member: a. entering into, renewing, extending, altering or varying any agreement or arrangement relating to the appointment of, or any fees payable to, any Financial Adviser or other adviser appointed or retained by Spark RE in connection with the Schemes; or b. paying any third party costs or expenses incurred by the Spark Group in connection with the transactions contemplated by this deed, the Transaction or the Schemes, (including legal, financial, tax, accounting, communications and public relations, counsel, expert and court fees and fees payable to Government Agencies) in excess of the amount disclosed in the Disclosure Materials;



Term	Meaning
	15 any of the following occurs: a. Spark RE ceases to be the responsible entity of the Spark Infrastructure Trust; b. Spark Securityholders resolve to remove or replace Spark RE as responsible entity of the Spark Infrastructure Trust; c. a meeting being convened to consider a resolution for the removal, retirement or replacement of Spark RE as responsible entity of the Spark Infrastructure Trust; d. an order is made by any court, or any application being made in any court, for the appointment of a temporary responsible entity of the Spark Infrastructure Trust in accordance with the Corporations Act; e. Spark RE effects or facilitates a termination of the Spark Infrastructure Trust; or f. Spark RE effects or facilitates the resettlement of any of the Trust Property; 16 Spark RE, or any other member of the Spark Group, settling or compromising or making any concessions in relation to any material tax claims, liabilities or disputes or making any election in relation to tax, where the financial impact on the Spark Group of such settlement, compromise, concession or election will be in excess of \$5 million (individually or in the aggregate); 17 a member of the Spark Group changing any accounting policy applied by them to report their financial position other than any change in policy required by a change in law or accounting standards; or 18 a member of the Spark Group receiving notice of any new material investigation, prosecution, arbitration, litigation or dispute threatened against a member of the Spark Group or an Asset Company which could reasonably be expected to give rise to a liability for the Spark Group in excess of \$50 million (individually or in the aggregate) (Material Proceedings), and for the avoidance of doubt which is not frivolous or vexatious, or circumstances arising which could reasonably be expected to give rise to any Material Proceedings or a Spark Group Member settling or compromising or making any material concessions in relation to any Material Proceedings where the financial impact on the Spark Group of such settlement, compromise or concession will be in excess of \$5 million (individually or in the aggregate). For the avoidance of doubt, Material Proceedings do not include any liability relating to an investigation, prosecution, arbitration, litigation or dispute to the extent that an insurer has agreed to cover the liability under an insurance policy maintained by a member of the Spark Group.
Spark Representations and Warranties	the representations and warranties of Spark RE set out in Schedule 4, as each is qualified by clause 7.5.
Spark Security	a stapled security comprising one Spark Unit stapled to one Spark Note.



Term	Meaning
Spark Securityholder	each person who is registered as the holder of a Spark Security in the Spark Security Register.
Spark Security Register	the register of securityholders of Spark Infrastructure maintained in accordance with the Corporations Act (comprising a register of holders of Spark Units and a register of holders of Spark Notes).
Spark Unit	a fully paid unit in the Spark Infrastructure Trust.
Special Distribution	has the meaning given in clause 5.9(a).
Specified Individual	Richard Francis, Gerard Dover, Jennifer Faulkner and Anthony Marriner.
Subdivision 14-D	has the meaning given in clause 19.15(a).
Superior Proposal	a bona fide Competing Proposal: 1 of the kind referred to in any of paragraphs 2, 3 or 4 of the definition of Competing Proposal; and 2 not resulting from a breach by Spark RE of any of its obligations under clause 11 of this deed, that the Spark Board, acting in good faith, and after receiving written legal advice from its external legal advisers and written financial advice from its Financial Adviser, determines: 3 is reasonably capable of being completed taking into account all aspects of the Competing Proposal, including its conditions, the identity, reputation and financial condition of the person making such proposal, and all relevant legal, regulatory and financial matters; and 4 would, if completed substantially in accordance with its terms, be more favourable to Spark Securityholders as a whole (other than Excluded Securityholders) than the Transaction, if applicable as amended or varied following application of the matching right set out in clause 11.6, taking into account all terms and conditions and other aspects of the Competing Proposal and of the Transaction (including any timing considerations, any conditions precedent, the identity, reputation and financial condition of the proponent, all relevant legal, regulatory and financial matters or other matters affecting the probability of completion) and the Reimbursement Fee (if payable).
Takeovers Panel	the Australian Takeovers Panel.
Third Party	a person other than the Consortium Sub, the Consortium Members and their other Associates.



Term	Meaning
Timetable	the indicative timetable for the implementation of the Transaction set out in Attachment 1.
Transaction	the acquisition of the Scheme Securities by the Consortium Sub through implementation of the Schemes in accordance with the terms of this deed.
Trust Account	an Australian dollar denominated trust account, which will be an account held with an Australian authorised deposit-taking institution, operated by Spark RE as trustee for the Scheme Securityholders as contemplated by the Schemes.
Trust Property	all of the scheme property of Spark Infrastructure Trust, including all Spark RE's rights, property and undertaking which are the subject of Spark Infrastructure Trust: 1 of whatever kind and wherever situated; and 2 whether present or future.
Trust Scheme	an arrangement under which the Consortium Sub acquires all of the Scheme Units and A class shares issued under the Related Steps from Scheme Securityholders, the form of which is attached as Attachment 2, facilitated by amendments to the Spark Infrastructure Trust Constitution as set out in the Spark Infrastructure Trust Supplemental Deed, subject to the requisite approvals of the Spark Securityholders.
Trust Scheme Meeting	the meeting of the Spark Securityholders, as holders of Spark Units, convened by Spark RE to consider and vote on the Trust Scheme Resolutions, and includes any meeting convened following any adjournment or postponement of that meeting.
Trust Scheme Resolutions	the resolutions to approve the Trust Scheme including: 1 a resolution for the purposes of section 601GC(1) of the Corporations Act to approve amendments to the Spark Infrastructure Trust Constitution as set out in the Spark Infrastructure Trust Supplemental Deed; and 2 a resolution for the purposes of item 7 of section 611 of the Corporations Act to approve the acquisition by the Consortium Sub of all the Spark Units as at the Scheme Record Date.

2 Interpretation

2.1 Interpretation

In this deed:



- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to this deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', '\$A' or 'dollar' is to the lawful currency of Australia;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney, Australia;
- (k) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1 of this Schedule 2, has the same meaning when used in this deed;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision;
- (n) a reference to a body (including an institute, association or authority), other than a party to this deed, whether statutory or not:
- (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,
- is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (o) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (p) a reference to liquidation or insolvency includes appointment of an administrator, a reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, bankruptcy, or a scheme, compromise or arrangement with creditors (other than solely with holders of securities or derivatives), or any similar procedure or, where applicable, changes in the constitution of any partnership or Third Party, or death;
- (q) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (r) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;



- (s) if an act prescribed under this deed to be done by a party on or by a given day is done after 5.00pm on that day in the place nominated by the party as its address, it is taken to be done on the next day in that place;
- (t) a reference to the Listing Rules and the Operating Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party; and
- (u) a reference to something being “reasonably likely” (or to a similar expression) is a reference to that thing being more likely than not to occur when assessed objectively.

2.2 Interpretation of inclusive expressions

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

2.3 Business Day

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



Schedule 3

Consortium Representations and Warranties

The Consortium Sub represents and warrants to Spark RE (in its own right and separately as trustee or nominee for each of the other Spark Indemnified Parties) that:

- (a) **Consortium Information:** the Consortium Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Spark Securityholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of Consortium Information:** the Consortium Information:
 - (1) will be provided to Spark RE in good faith and on the understanding that Spark RE and each other Spark Indemnified Party will rely on that information for the purposes of preparing the Scheme Booklet; and
 - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60, applicable Takeovers Panel guidance notes and the Listing Rules,and all information provided by or on behalf of the Consortium Sub to the Independent Expert will, as at the date that information is provided, be provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (c) **new information:** it will, as a continuing obligation, provide to Spark RE all further or new information which arises after the Scheme Booklet has been despatched to Spark Securityholders until the date of the Scheme Meetings which is necessary to ensure that the Consortium Information is not misleading or deceptive in a material manner (including by way of omission);
- (d) **availability of funding:** by 8.00am on the Second Court Date, the Consortium Sub will have available to it on an unconditional basis (other than any conditions relating to the approval of the Schemes by the Court, or procedural or documentary matters which can only be satisfied or performed after the Second Court Date) sufficient cash amounts (whether from internal cash resources or external funding arrangements or a combination thereof) to enable the Consortium Sub to satisfy its obligations to provide the Scheme Consideration in accordance with the terms of this deed, the Schemes and the Deed Poll;
- (e) **Consortium Sub:** the Consortium Sub:
 - (1) as at the date of this deed, is wholly-owned, and 100% Controlled by the Consortium Members; and
 - (2) as at 8:00am on the Second Court Date, will be wholly-owned, and 100% Controlled by the Consortium Members or any Related Entities of the Consortium Members;
- (f) **validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;



- (g) **authority:** the execution and delivery of this deed by the Consortium Sub has been properly authorised by all necessary corporate action of the Consortium Sub;
- (h) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (i) **no default:** neither this deed nor the carrying out by it of the transactions contemplated by this deed conflicts with or results in the breach of or a default under:
- (1) any provision of the Consortium Sub's constituent documents; or
 - (2) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it is bound,
- and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;
- (j) **deed binding:** this deed is a valid and binding obligation of the Consortium Sub, enforceable in accordance with its terms;
- (k) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to it, nor has any regulatory action of any nature of which it is aware been taken that would reasonably be likely to prevent or materially restrict its ability to fulfil its obligations under this deed, under the Deed Poll or under the Schemes;
- (l) **Equity Commitment Letters:**
- (1) the Consortium Sub has disclosed true and complete copies of the Equity Commitment Letters to Spark RE;
 - (2) the Equity Commitment Letters have been duly executed by the parties to the Equity Commitment Letter and constitute legally binding obligations on, and rights of, those parties that are enforceable in accordance with its terms;
 - (3) as continuing obligations, without the prior written consent of Spark RE, the Consortium Sub will not:
 - (A) amend, or agree to amend, the Equity Commitment Letters;
 - (B) waive, or agree to waive, any of its rights under the Equity Commitment Letters; and
 - (C) agree or consent to any novation, assignment or transfer of any counter-party's obligations under the Equity Commitment Letters, except as expressly permitted under the relevant Equity Commitment Letter; and
 - (4) the Consortium Sub will enforce its rights under the Equity Commitment Letters; and
- (m) **Debt Commitment Letters:**
- (1) the Consortium Sub has disclosed true and complete copies of the Debt Commitment Letters to Spark RE;
 - (2) as continuing obligations, without the prior written consent of Spark RE, the Consortium Sub will not:
 - (A) amend, or agree to amend, the Debt Commitment Letters;
 - (B) waive, or agree to waive, any of its rights under the Debt Commitment Letters; and



- (C) agree or consent to any novation, assignment or transfer of any counter-party's obligations under the Debt Commitment Letters, except as expressly permitted under the relevant Debt Commitment Letter; and
- (3) the Consortium Sub will enforce its rights under the Debt Commitment Letters.

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Schedule 4

Spark Representations and Warranties

Spark RE represents and warrants to the Consortium Sub (in its own right and separately as trustee or nominee for each of the other Consortium Indemnified Parties) that:

- (a) **Spark Information:** the Spark Information contained in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Spark Securityholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of Spark Information:** the Spark Information:
 - (1) will be prepared and included in the Scheme Booklet in good faith and on the understanding that the Consortium Sub and each other Consortium Indemnified Party will rely on that information for the purposes of determining to proceed with the Transaction; and
 - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60, applicable Takeovers Panel guidance notes and the Listing Rules,and all information provided by or on behalf of Spark RE to the Independent Expert will, as at the date that information is provided, be provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (c) **new information:** it will, as a continuing obligation (but in respect of the Consortium Information, only to the extent that the Consortium Sub provides Spark RE with updates to the Consortium Information), ensure that the Scheme Booklet is updated or supplemented to include all further or new information which arises after the Scheme Booklet has been despatched to Spark Securityholders until the date of the Scheme Meetings which is necessary to ensure that the Scheme Booklet is not misleading or deceptive in a material manner (including by way of omission);
- (d) **validly existing:**
 - (1) Spark RE is a validly existing corporation registered under the laws of its place of incorporation;
 - (2) Spark Infrastructure Trust is duly established, is validly subsisting, has not been terminated and is a registered managed investment scheme;
 - (3) Spark RE is the only trustee and responsible entity of Spark Infrastructure Trust, has been validly appointed and remains as responsible entity of Spark Infrastructure Trust;
 - (4) as far as Spark RE is aware, no action has been taken to either:
 - (A) terminate Spark Infrastructure Trust; or
 - (B) wind up Spark Infrastructure Trust whether under Chapter 5C of the Corporations Act or otherwise,



other than any frivolous or vexatious application, or any application that is set aside within 14 days or, if earlier, by the Second Court Date;

- (5) Spark RE has not exercised its powers under the Spark Infrastructure Trust Constitution to release, abandon or restrict any power conferred on it by the Spark Infrastructure Trust Constitution;
 - (6) Spark RE is not in default under the Spark Infrastructure Trust Constitution; and
 - (7) subject to law and the Spark Infrastructure Trust Constitution, Spark RE has the right to be fully indemnified out of the Trust Property in respect of the obligations incurred by it as responsible entity of Spark Infrastructure Trust under the documents to which it is a party, and as far as Spark RE is aware there is nothing that would prevent Spark RE from being fully indemnified out of the Trust Property for any obligations under or in connection with this deed or any of the transactions contemplated by this deed that it incurs in its capacity as responsible entity of Spark Infrastructure Trust;
- (e) **authority:** the execution and delivery of this deed by Spark RE has been properly authorised by all necessary corporate action of Spark RE, and Spark RE has taken or will take all necessary corporate action to authorise the performance by Spark RE of this deed and the transactions contemplated by this deed;
- (f) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (g) **no default:** neither this deed nor the carrying out by Spark RE of the transactions contemplated by this deed does or will conflict with or result in the breach of or a default under:
 - (1) any provision of the constitutions of Spark RE or Spark Infrastructure Trust; or
 - (2) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other Spark Group Member is bound,and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;
- (h) **deed binding:** this deed is a valid and binding obligation of Spark RE, enforceable in accordance with its terms;
- (i) **continuous disclosure:** Spark RE has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, other than for this Transaction, it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure;
- (j) **capital structure:** its capital structure, including all issued securities as at the date of this deed, is as set out in Schedule 5 and it has not, and no Spark Group Member has, issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into Spark Securities other than as set out in Schedule 5 and neither it nor any Spark Group Member is under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any units, options, warrants, performance rights or other securities or instruments in Spark Infrastructure Trust;



- (k) **corporate structure:** the ownership structure of the Spark Group provided in the Disclosure Materials (as document 01.01.01 in the data room) (**Spark Structure Diagram**) is complete and accurate as at the date of this deed (insofar as the Structure Diagram describes the ownership of Spark Group Members) and no Spark Group Member:
- (1) has issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights which are still outstanding and may convert into shares or units in any Spark Group Member (**Convertible Securities**); or
 - (2) is under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any shares, units in any Spark Group Member or any Convertible Securities,
- other than as set out in the Spark Structure Diagram or Schedule 5, and other than any such issues, grants, agreements, obligations and rights, to, with or of other Spark Group Members;
- (l) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to it or another Spark Group Member, nor has any regulatory action of any nature of which it is aware been taken that would reasonably be likely to prevent or materially restrict its ability to fulfil its obligations under this deed or under the Schemes;
- (m) **compliance:** as far as Spark RE is aware, each member of the Spark Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Government Agencies having jurisdiction over them;
- (n) **material licences:** as far as Spark RE is aware, the Spark Group has all material licences, authorisations and permits necessary for it to conduct the business of the Spark Group as it has been conducted in the 12 months before the date of this deed;
- (o) **Disclosure Materials:**
- (1) it has collated and prepared all of the Disclosure Materials in good faith for the purposes of a due diligence process and in this context, the Disclosure Materials have been collated with reasonable care and skill;
 - (2) as at the date of this deed, it is not aware of any information contained in the Disclosure Materials that is false or misleading in any material respect (including by omission); and
 - (3) as at the date of this deed, it has not knowingly withheld or omitted information in the Spark Group's possession or otherwise known to the Spark RE from disclosure to Consortium Sub which could reasonably be expected to be material to Consortium Sub's evaluation of the Spark Group and the merits of the Transaction.

For the purpose of clause (o)(2), the Disclosure Materials are deemed not to include any information, document, representation, statement, view or opinion to the extent that it contains or expresses a forecast, prediction or projection or is otherwise forward looking at the date of this deed.

For the avoidance of doubt, while Spark RE represents and warrants the contents of clause (o)(3) above, Spark RE makes no representation or warranty whatsoever as to the adequacy or sufficiency of the Disclosure Materials for the purpose of Consortium Sub acquiring the Scheme Securities or for Consortium



Sub's funding of that acquisition, which are matters of which Consortium Sub has to satisfy itself;

(p) **Pre-emptive Rights:** without limiting the warranty in clause (o) above, as at the date of this deed:

- (1) all Material Contracts of the Spark Group are disclosed in full in the Disclosure Materials and the copies of such Material Contracts disclosed are current, accurate and complete; and
- (2) no Spark Group Member has received notice from a party to a Material Contract that the party intends to exercise any pre-emptive rights in connection with its entry into this deed and implementation of the Schemes and the Transaction; and

(q) **Anti-corruption and bribery:**

- (1) neither Spark RE nor any of its Related Entities, nor any director, officer, employee, agent, or other person acting on behalf or for the benefit of Spark RE or its Related Entities, nor to the knowledge of each Spark Group Member, the Asset Companies or any of their respective directors, officers, employees, agents, or other persons or entities acting on their behalf or for their benefit:
 - (A) has offered, promised, provided, or authorised the provision of any money, property, contribution, gift, entertainment or other thing of value, directly or indirectly, to any Government Official or any other person to influence official action or secure an improper advantage, or to encourage the recipient to breach a duty of good faith or loyalty or the policies of their employer, or has otherwise violated, conspired to violate or aided and abetted the violation of any Anti-Corruption Law; nor
 - (B) is a Sanctioned Person nor has engaged in, nor is it now engaged in, any dealings or transactions with or for the benefit of any Sanctioned Person, nor has it otherwise violated Sanctions;
- (2) each Spark Group Member, including their respective directors, officers and employees and, to the knowledge of each Spark Group Member, (i) each Spark Group Member's agents and any other persons or entities acting on their behalf or for their benefit and (ii) the Asset Companies and each of their respective directors, officers, employees, agents, or other persons or entities acting on their behalf or for their benefit, has conducted its operations at all times in compliance with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions, and no suit, action, inquiry, investigation or proceeding before or by any Government Agency with respect to alleged violations by or on behalf of a Spark Group Member of any Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions is pending or, to the knowledge of any Spark Group Member, threatened;
- (3) Spark RE and its Related Entities have in place and have adhered to, policies and procedures reasonably designed to prevent them and their directors, officers, employees, contractors, sub-contractors, service providers, agents and intermediaries from undertaking any activity, practice or conduct relating to their respective businesses that would constitute an offence under the Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions; and



- (4) Spark RE is not aware of any non-adherence by the Asset Companies and their directors, officers, employees, contractors, sub-contractors, service providers, agents and intermediaries to the relevant policies and procedures that the Asset Companies have in place in respect of Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

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Schedule 5

Spark Infrastructure details

Spark Infrastructure's capital structure as at the date of this deed

Security	Total number on issue
Spark Securities	1,754,954,280
Spark Performance Rights	2,051,099.*

* Additional Spark Securities may be issued on vesting of these Spark Performance Rights in accordance with their terms.



Schedule 6

Related Steps

Definitions

The meanings of the following terms used in this Schedule are set out below:

Term	Meaning
New Stapled Security	a Stapled security comprising one Spark Unit, one Spark Holdco 1 Share, one Spark Holdco 2 Share, one Spark Holdco 3 Share and one Spark Note.
Spark Holdco 1	Spark Infrastructure Holdings No.1 Pty Limited ACN 116 940 786.
Spark Holdco 1 Share	an A class share in Spark Holdco 1, which share confers on its holder a right to 0.001c on a winding up of Spark Holdco 1 and no other voting, dividend, capital or other rights.
Spark Holdco 2	Spark Infrastructure Holdings No.1 Pty Limited ACN 116 940 795.
Spark Holdco 2 Share	an A class share in Spark Holdco 1, which share confers on its holder a right to 0.001c on a winding up of Spark Holdco 1 and no other voting, dividend, capital or other rights.
Spark Holdco 3	Spark Infrastructure Holdings No.3 Pty Limited ACN 117 034 492.
Spark Holdco 3 Share	an A class share in Spark Holdco 3, which share confers on its holder a right to 0.001c on a winding up of Spark Holdco 3 and no other voting, dividend, capital or other rights.

Restructure Steps

The following steps will be taken at the times and in the order set out below.

Step 1: Conversion to public company

This step will occur before the Effective Date.

Each of Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 converts into a public company.

Spark Holdco 1 will convert its 247,863,434 ordinary shares into 17,549,542,800 ordinary shares.



Spark Holdco 2 will convert its 1,326,734,264 ordinary shares into 17,549,542,800 ordinary shares.

Spark Holdco 3 will convert its 13,202,425 ordinary shares into 17,549,542,800 ordinary shares.

Spark RE, as sole member of Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 will vote in favour of all resolutions required to approve or give effect to the above actions, and to amend the constitutions Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 to include provisions substantially the same as the Stapling Provisions (as that term is defined in the Constitution), and include the terms of issue for the Spark Holdco 1 Shares, Spark Holdco 2 Shares and Spark Holdco 3 Shares respective, in each such constitution with effect on and from implementation of Step 2 below.

Step 2: Creation of A class shares

This step will be implemented on the Implementation Date.

Spark Holdco 1 will:

- amend its constitution to introduce Stapling Provisions and terms of issue for Spark Holdco 1 Shares;
- convert one ordinary share into a Spark Holdco 1 Share; and
- convert its one Spark Holdco 1 Share into 1,754,954,280¹ Spark Holdco 1 Shares.

Spark Holdco 2 will:

- amend its constitution to introduce Stapling Provisions and terms of issue for Spark Holdco 2 Shares;
- convert one ordinary share into a Spark Holdco 2 Share; and
- convert its one Spark Holdco 2 Share into 1,754,954,280² Spark Holdco 2 Shares.

Spark Holdco 3 will:

- amend its constitution to introduce Stapling Provisions and terms of issue for Spark Holdco 3 Shares;
- convert one ordinary share into a Spark Holdco 3 Share; and
- convert its one Spark Holdco 3 Share into 1,754,954,280³ Spark Holdco 3 Shares.

On or before the Implementation Date, Spark RE, as sole member of Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 will vote in favour of all resolutions required to approve or give effect to the above actions on the Implementation Date.

Step 3: Distribution of A class shares and Stapling

This step will be implemented on the Implementation Date immediately after Step 2.

The Spark Infrastructure Trust makes an in specie capital distribution to Spark Securityholders comprising one Spark Holdco 1 Share, one Spark Holdco 2 Share and

¹ This number of Spark Holdco 1 Shares may be increased by the number of Spark Securities (if any) that are issued in respect of Spark Performance Rights before the Implementation Date.

² This number of Spark Holdco 2 Shares may be increased by the number of Spark Securities (if any) that are issued in respect of Spark Performance Rights before the Implementation Date.

³ This number of Spark Holdco 3 Shares may be increased by the number of Spark Securities (if any) that are issued in respect of Spark Performance Rights before the Implementation Date.



one Spark Holdco 3 Share for each Spark Unit held by the Spark Securityholder as at the Scheme Record Date.

Spark Holdco 1 Shares, Spark Holdco 2 Shares and Spark Holdco 3 Shares are Stapled to the Spark Units and Spark Notes comprising Spark Securities, simultaneously with their distribution such that they are distributed on a stapled basis and each Spark Securityholder as at the Scheme Record Date will hold, on and from the time of the distribution, a New Stapled Security for each Spark Security held by the Spark Securityholder as at the Scheme Record Date.

Step 4: Acquisition of New Stapled Securities

This step will be implemented on the Implementation Date immediately after Step 3.

The Consortium Sub will acquire New Stapled Securities from each Spark Securityholder (other than Excluded Securityholders) in consideration for the Scheme Consideration pursuant to the Schemes.

Spark RE, Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 will register in the registers comprising the Spark Security Register (and, in the case of Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3, their registers of members) the transfers of Spark Units, Spark Holdco 1 Shares, Spark Holdco 2 Shares, Spark Holdco 3 Shares and Spark Notes to the Consortium Sub.



Signing page

Executed as a deed

Executed by Pika Bidco Pty Ltd ACN 652 787 258 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

sign here ►  sign here ► _____
Director Director/Company Secretary

print name Bruce R Crane print name _____

Signed sealed and delivered by
Spark Infrastructure RE Limited by

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____



Signing page

Executed as a deed

Executed by Pika Bidco Pty Ltd ACN 652 787 258 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

sign here ►

Director

sign here ►

Director/Company Secretary

print name

print name

Andrew Jennings

Signed sealed and delivered by
Spark Infrastructure RE Limited by

sign here ►

Company Secretary/Director

print name

sign here ►

Director

print name



Signing page

Executed as a deed

Executed by Pika Bidco Pty Ltd ACN 652 787 258 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

sign here ► _____ sign here ► _____
Director Director/Company Secretary

print name _____ print name _____

Signed sealed and delivered by
Spark Infrastructure RE Limited by

sign here ►  _____
Company Secretary/Director

print name Jennifer Faulkner

sign here ►  _____
Director

print name Rick Francis



Attachment 1

Indicative Timetable

Event	Date
Announcement and signing of scheme implementation deed	23 August 2021
Scheme Booklet provided to ASIC in draft	4 October 2021
First Court hearing	21 October 2021
Trust Scheme Meeting	22 November 2021
Creditors' Scheme Meeting	22 November 2021
Second Court hearing	24 November 2021
Effective Date	25 November 2021
Scheme Record Date	2 December 2021
Implementation Date	16 December 2021



Attachment 2

Schemes

Part A – Trust Scheme

Attached.

Part B – Creditors' Scheme

Attached.



HERBERT
SMITH
FREEHILLS

Deed Poll

Spark Infrastructure Trust Constitution Amending Deed

Spark Infrastructure RE Limited

For personal use only



Spark Infrastructure Trust Constitution Amending Deed

Date ►

RE

Spark Infrastructure RE Limited

ACN 114 940 984 of Level 29, 225 George Street, Sydney NSW
2000

Recitals

- 1 Spark Infrastructure Trust ARSN 116 870 725 (**Trust**) is constituted and governed by the Constitution of the Spark Infrastructure Trust dated 25 October 2005, as amended from time to time (**Constitution**) and lodged with ASIC.
- 2 The Trust is registered as a managed investment scheme under Chapter 5C of the Corporations Act.
- 3 The Constitution was amended by deeds dated 8 November 2005, 9 December 2010 and 31 May 2011.
- 4 The RE and the Consortium Sub have agreed, by executing the Implementation Deed, to implement the Trust Scheme and related transactions.
- 5 The Constitution will be amended in the manner set out in this amending deed to facilitate implementation of the Trust Scheme.
- 6 Section 601GC(1)(a) of the Corporations Act provides that the Constitution may be modified by special resolution of Unitholders.
- 7 At a meeting of Unitholders held on **[insert date]**, the Unitholders approved, among other resolutions, a special resolution to make the amendments to the Constitution contained in this deed.

This deed witnesses as follows:



1 Definitions and interpretation

1.1 Definitions

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

Term	Meaning
ASIC	the Australian Securities and Investments Commission.
Consortium Sub	Pika Bidco Pty Ltd ACN 652 787 258.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Court	the Supreme Court of New South Wales, or such other court of competent jurisdiction under the Corporations Act agreed to in writing by the RE and the Consortium Sub.
Creditors' Scheme	the scheme of arrangement under Part 5.1 of the Corporations Act between the RE and holders of Notes, the form of which is attached as Attachment 2 in the Implementation Deed, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by the Consortium Sub and the RE.
Effective	1 in relation to the Trust Scheme, the coming into effect of the amendments to the Constitution (which will occur on the date and at the time a copy of the amended Constitution, or of the amendments, is lodged with ASIC under section 601GC(2) of the Corporations Act); and 2 in relation to the Creditors' Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) in relation to the Creditors' Scheme but in any event at no time before an office copy of the orders of the Court is lodged with ASIC.
Effective Date	the date on which the Trust Scheme and Creditors' Scheme have both become Effective.
Government Agency	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department,



Term	Meaning
	commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.
Implementation Deed	the scheme implementation deed between the RE and the Consortium Sub dated on or about 23 August 2021, relating to the implementation of the Trust Scheme and Creditors' Scheme.
Note	has the same meaning as in the Constitution.
Registered	has the same meaning as in the Constitution.
Scheme Share	has the same meaning as in Schedule 2 proposed to be included in the Constitution in accordance with this deed.
Trust Scheme	an arrangement under which the Consortium Sub acquires all of the Units and Scheme Shares from Unitholders facilitated by amendments to the Constitution set out in the Schedule, subject to the requisite approvals of Unitholders (as may be amended from time to time in accordance with clause 6.7 of the Schedule 2 proposed to be included in the Constitution).
Units	has the same meaning as in the Constitution.
Unitholder	a person Registered as a holder of Units from time to time.

1.2 Interpretation

In this deed:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;



- (f) a reference to a clause, party, part, schedule, attachment or exhibit is a reference to a clause or part of, and a party, schedule, attachment or exhibit to, this deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (h) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to Australian currency unless denominated otherwise;
- (j) a reference to any time is a reference to that time in Sydney, New South Wales;
- (k) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this deed;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision; and
- (n) a reference to a body, other than a party to this deed (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

1.3 Interpretation of inclusive expressions

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

2 Operation of this deed

Clause 4 of this deed shall take effect on and from the Effective Date.

3 Conditions

This deed is conditional upon, and will have no force or effect until, the satisfaction of each condition precedent stipulated in clause 3.1 of the Creditors' Scheme, other than the coming into effect of the amendments made by this deed.



4 Amendment of the Constitution

4.1 Amendment

- (a) The Constitution is amended (except for clauses 1.1 and 2 of the Constitution, which are not replaced, amended, reproduced, repeated, restated or otherwise affected in any way by this deed) by:
- (1) deleting clauses 2.4 and 2.6 of Schedule 1 of the Constitution;
 - (2) deleting clauses 6(b)(i), 6(b)(ii) and 6(b)(v) of Schedule 1 of the Constitution;
 - (3) deleting the definitions of Accession Deed and Co-operation Deed in clause 16.1 of Schedule 1 of the Constitution;
 - (4) deleting the words "and who has executed the Accession Deed" from the definition of 'Stapled Entity' in clause 16.1 of Schedule 1 of the Constitution;
 - (5) deleting the words "the Co-operation Deed," in the definition of 'Transaction Documents' in clause 16.1 of Schedule 1 of the Constitution;
 - (6) deleting the words "and which Attached Securities are quoted on the ASX jointly as a "Stapled Security" or such other term as the ASX permits" in the definition of 'Stapled' in clause 16.1 of Schedule 1; and
 - (7) inserting as a new Schedule 2 into the Constitution the text contained in the Schedule.
- (b) The RE confirms that clauses 1.1 and 2 of the Constitution are not replaced, amended, reproduced, repeated, restated or otherwise affected in any way by this deed.
- (c) The Constitution, as it applies to the Trust and as amended by this deed, is the constitution of the Trust.

4.2 Binding conditions

This deed is binding on the RE, each Unitholder and any other person claiming through any of them as if each was a party to this deed.

5 Governing law and jurisdiction

This deed is governed by the law of Victoria.

Schedule

Schedule 2 – Trust Scheme

1 Background

1.1 Schemes and related transactions

The Schemes and related transactions are intended to implement the following transactions (the **Transaction**):

- (a) Scheme Shares are created through the following steps:
 - (1) the rights attaching to one ordinary share in each of Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 are varied so that such ordinary share becomes an 'A class share'; and
 - (2) that A class share in each of Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 is subdivided into a number of A class shares in Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 (as applicable) as is in each case equal to the aggregate number of Spark Securities on issue as at the Scheme Record Date;
- (b) the RE distributes the Scheme Shares to Scheme Securityholders as a distribution of capital in accordance with clauses 10.9 and 10.17 to form the New Scheme Securities and, simultaneously with such distribution, the Scheme Shares are Stapled to the Spark Securities; and
- (c) the Consortium Sub acquires the New Scheme Securities in consideration for the Scheme Consideration in accordance with the Schemes.

The actions identified in this clause 1.1 of this Schedule 2 will be implemented by the RE pursuant to and in accordance with the provisions of this Schedule 2 and the provisions of the Implementation Deed.

The actions required to implement the Transaction will take place on the Implementation Date in the order set out above, with each action occurring immediately after the preceding action (except that, for the avoidance of doubt, the distribution and Stapling contemplated in clause 1.1(b) occur simultaneously).

1.2 Deed Poll

The Trust Scheme attributes actions to the Consortium Sub but does not itself impose an obligation on it to perform those actions. The Consortium Sub has agreed, by executing the Deed Poll, to perform the actions attributed to it under and in accordance with the Trust Scheme, including the provision or procuring the provision of the Scheme Consideration to the Scheme Securityholders.



2 Scheme Securityholders

2.1 Determination of Scheme Securityholders

To establish the identity and addresses of the Scheme Securityholders, dealings in Spark Securities and other alterations to the Register will only be recognised if:

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

and the RE must not accept for registration, nor recognise for any purpose (except a transfer to the Consortium Sub pursuant to the Schemes and any subsequent transfer by the Consortium Sub or its successors in title), any transfer or transmission application or other request received after such times, or received before such times but not in registrable or actionable form, as appropriate.

2.2 Register

- (a) The RE must register, or cause to be registered, registrable transmission applications or transfers of the Scheme Securities in accordance with clause 2.1(b) of this Schedule 2 by, or as soon as practicable after, the Scheme Record Date; provided that, for the avoidance of doubt, nothing in this clause 2.2(a) of this Schedule 2 requires the registration of a transfer that would result in a Scheme Securityholder holding a parcel of Spark Securities that is less than a 'marketable parcel' (for the purposes of this clause 2.2(a) of this Schedule 2 'marketable parcel' has the meaning given in the Operating Rules).
- (b) If the Trust Scheme becomes Effective, a holder of Scheme Securities (and any person claiming through that holder) must not dispose of or purport or agree to dispose of, any Scheme Securities or any interest in them after the Scheme Record Date (except a transfer to the Consortium Sub pursuant to the Schemes or any subsequent transfer by the Consortium Sub or its successors in title).
- (c) For the purpose of determining entitlements to the Scheme Consideration, the RE must maintain the Register in accordance with the provisions of this clause 2.2 of this Schedule 2 until the Scheme Consideration has been paid to the Scheme Securityholders. The Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Spark Securities will cease to have effect after the Scheme Record Date as documents of title in respect of those Spark Securities and, as from that date and time, each entry current at that date on the Register (other than any entries on the Register in respect of the Consortium Sub) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Spark Securities relating to that entry.
- (e) As soon as possible on or after the Scheme Record Date, and in any event by 5.00pm on the first Business Day after the Scheme Record Date, the RE will ensure that details of the names, Registered Addresses and holdings of Spark Securities for each Scheme Securityholder as shown in the Register are available to the Consortium Sub in the form the Consortium Sub reasonably requires.



3 New Scheme Securities

3.1 Approval of creation of Scheme Shares

Unless it has already done so before the Implementation Date, the RE as sole member of Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 will vote in favour of all resolutions required to be passed, including under sections 246B and 254H of the Corporations Act, by members of Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 in order to create, respectively:

- (a) the number of Spark Holdco 1 Shares equal to the number of Scheme Units as at the Scheme Record Date;
- (b) the number of Spark Holdco 2 Shares equal to the number of Scheme Units as at the Scheme Record Date; and
- (c) the number of Spark Holdco 3 Shares equal to the number of Scheme Units as at the Scheme Record Date.

3.2 Amendments to Constituent Documents

Unless it has already done so before the Implementation Date, the RE as sole member of Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 will vote in favour of all resolutions required to amend the constitutions Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 to include provisions substantially the same as the Stapling Provisions in each such constitution.

3.3 Distribution of Scheme Shares

- (a) The RE will distribute, as an in specie capital distribution in accordance with clauses 10.9 and 10.17, all of the Scheme Shares to Scheme Securityholders to which they are entitled such that, for each Scheme Unit that a Scheme Securityholder holds, the Scheme Securityholder will receive one Spark Holdco 1 Share, one Spark Holdco 2 Share and one Spark Holdco 3 Share.
- (b) In accordance with clause 10.17, the RE (as agent for each Scheme Securityholder) agrees on behalf of each Scheme Securityholder to become a member of each of Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 with effect from receipt of the Scheme Shares.

3.4 Stapling

Simultaneously with the distribution of the Scheme Shares to Scheme Securityholders, the RE will be taken to have determined for all purposes (including for purposes of clause 6(b)(iii) of Schedule 1) that one Spark Holdco 1 Share, one Spark Holdco 2 Share and one Spark Holdco 3 Share will be Stapled to each Scheme Security to form a New Scheme Security. From the time of the distribution, a reference to 'Stapled Securities' in the Stapling Provisions will be deemed to be a reference to the New Scheme Securities.

3.5 Scheme Securityholders' appointment of RE as attorney

Each Scheme Securityholder, without the need for any further act by any Scheme Securityholder, irrevocably appoints the RE and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of receiving, holding and delivering to any person any share certificates or other documents of title and executing any document necessary or expedient to give effect to the



transactions described in this clause 3 of this Schedule 2 or doing any other act or thing necessary or desirable to give effect to this clause 3 of this Schedule 2.

4 Acquisition

4.1 Agreement to transfer

Each Scheme Securityholder:

- (a) agrees to the transfer (at the same time as their other Spark Securities are transferred pursuant to the Creditors' Scheme) of all of their Scheme Units and Scheme Shares to the Consortium Sub, together with all rights and entitlements attaching to those Scheme Units and Scheme Shares, in consideration for the payment of the Scheme Consideration; and
- (b) without the need for any further act by any Scheme Securityholder, irrevocably appoints the RE and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of executing any document necessary or expedient to give effect to the transactions described in this clause 4 of this Schedule 2 or doing any other act or thing necessary or desirable to give effect to this clause 4 of this Schedule 2.

4.2 Provision of Scheme Consideration

- (a) Each Scheme Securityholder is entitled to receive the Scheme Consideration in respect of each Scheme Unit and Scheme Share held by that Scheme Securityholder, subject to the terms of the Schemes.
- (b) Subject to clause 4.2(e), the Consortium Sub must, by no later than the Business Day before the Implementation Date, deposit, or procure the deposit, in cleared funds of an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Securityholders into an Australian dollar denominated trust account, which will be an account held with an Australian authorised deposit-taking institution, operated by the RE as trustee for the Scheme Securityholders (**Trust Account**) (except that any interest on the amounts deposited (less bank fees and other charges) will be to the Consortium Sub's account).
- (c) On the Implementation Date after the New Scheme Securities have been created in accordance with clause 3.4 of this Schedule 2, subject to funds having been deposited in accordance with clause 4.2(b) of this Schedule 2, the RE must pay or procure the payment of the Scheme Consideration from the Trust Account to each Scheme Securityholder to which they are entitled to under this clause 4.2.
- (d) The obligations of the RE under clause 4.2(c) of this Schedule 2 will be satisfied by the RE (in its absolute discretion, and despite any election referred to in paragraph (1) below or authority referred to in paragraph (2) below made or given by the Scheme Securityholder):
 - (1) if a Scheme Securityholder has, before the Scheme Record Date, made a valid election in accordance with the requirements of the Registry to receive distribution payments from the RE by electronic funds transfer to a bank account nominated by the Scheme Securityholder, paying, or procuring the payment of, the relevant



- amount in Australian currency by electronic means in accordance with that election;
- (2) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Securityholder by an appropriate authority from the Scheme Securityholder to the RE; or
 - (3) dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Securityholder by prepaid post to their Registered Address (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Securityholder (or in the case of joint holders, in accordance with the procedures set out in clause 6.3 of this Schedule 2).
- (e) If the Consortium Sub is required by Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) to pay amounts to the Australian Taxation Office (**ATO**) in respect of the acquisition of New Scheme Securities from certain Scheme Securityholders, the Consortium Sub is permitted to deduct the relevant amounts from the payment of the Scheme Consideration to those Scheme Securityholders and remit such amounts to the relevant taxation authorities. The aggregate sum payable to Scheme Securityholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Scheme Securityholders shall be taken to be in full and final satisfaction of the amounts owing to those Scheme Securityholders. The Consortium Sub must pay any amount so withheld to the relevant taxation authorities within the time permitted by law, and, if requested in writing by the relevant Scheme Securityholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Scheme Securityholder.
- (f) To the extent that, following satisfaction of the RE's obligations under clause 4.2(d) of this Schedule 2, there is a surplus in the amount held by the RE as trustee for the Scheme Securityholders in the Trust Account, that surplus must be paid by the RE to the Consortium Sub.
- (g) If, following satisfaction of Consortium Sub's obligations under clause 4.2(b) of this Schedule 2 but prior to the occurrence of all of the events described in clause 4.3 of this Schedule 2, this Scheme lapses because the Implementation Deed or the Deed Poll is terminated in accordance with its terms:
- (1) the RE must immediately repay (or cause to be repaid) to or at the direction of Consortium Sub the funds that were deposited in the Trust Account plus any interest on the amounts deposited (less bank fees and other charges); and
 - (2) the obligation to transfer New Scheme Securities, together with all rights and entitlements attaching to the New Scheme Securities as at the Implementation Date, to Consortium Sub under 4.3(a) will immediately cease.
- (h) Where the calculation of the Scheme Consideration to be provided to a particular Scheme Securityholder would result in the Scheme Securityholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded down to the nearest cent.

4.3 Transfer to Consortium Sub

On the Implementation Date:



- (a) after the Consortium Sub has given the RE written confirmation of the provision of the Scheme Consideration, all of the Scheme Units held by Scheme Securityholders, together with all rights and entitlements attaching to those Scheme Units as at the Implementation Date, and together with the Spark Holdco 1 Shares, Spark Holdco 2 Shares and Spark Holdco 3 Shares Stapled to those Scheme Units, will be transferred to the Consortium Sub without the need for any further act by any Scheme Securityholder (other than acts performed by the RE (or its directors or officers) as attorney and agent for the Scheme Securityholders under clause 6.2 of this Schedule 2) by:
- (1) the RE delivering to the Consortium Sub a duly executed Scheme Transfer, executed on behalf of the Scheme Securityholders by the RE, for registration; and
 - (2) the Consortium Sub duly executing the Scheme Transfer as transferee, attending to the stamping of the Scheme Transfer (if required) and delivering it to the RE, Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 for registration; and
- (b) following receipt of the Scheme Transfer in accordance with clause 4.3(a)(2), but subject to the stamping of the Scheme Transfer (if required), the RE must immediately register, and (as necessary) take all steps within its power to cause the registration by Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 (as applicable) of, the transfers of the New Scheme Securities, and enter, and (as necessary) take all steps within its power to cause the entry by Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 (as applicable) of, the name of the Consortium Sub in the Register in respect of all New Scheme Securities transferred to it under clause 4.3(a) of this Schedule 2 at the same time as the RE enters, or procures the entry of, the name of the Consortium Sub in the Register in respect of all other New Scheme Securities transferred to it in accordance with the Creditors' Scheme.

4.4 Scheme Securityholders' warranties

Each Scheme Securityholder warrants to the RE and the Consortium Sub, and appoints and authorises the RE as its attorney and agent to warrant to the Consortium Sub, that as at the Implementation Date:

- (a) all their Scheme Units and Scheme Shares (including any rights and entitlements attaching to those Scheme Units and Scheme Shares) which are transferred to the Consortium Sub will, at the date they are transferred to the Consortium Sub, be fully paid and free from all Encumbrances; and
- (b) they have full power and capacity to sell and to transfer their Scheme Units and Scheme Shares (including any rights and entitlements attaching to those Scheme Units and Scheme Shares) to the Consortium Sub.

The RE must provide such warranties to the Consortium Sub as agent and attorney of each Scheme Securityholder.

4.5 Title to and rights in New Scheme Securities

- (a) To the extent permitted by law, the Scheme Units and Scheme Shares (including all rights and entitlements attaching to the Scheme Units and Scheme Shares) transferred to the Consortium Sub will, at the time of transfer vest in the Consortium Sub free from all Encumbrances.
- (b) Immediately upon payment of the Scheme Consideration in accordance with clause 4.2 of this Schedule 2, the Consortium Sub will be beneficially entitled to



the Scheme Units and Scheme Shares to be transferred to it under this Trust Scheme pending registration by the RE, Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 of the Consortium Sub in the Register as the holder of the relevant Scheme Units and Scheme Shares.

4.6 Appointment of sole proxy

Immediately upon the provision of the Scheme Consideration to each Scheme Securityholder, and until the Consortium Sub is registered as the holder of all New Scheme Securities in the Register, each Scheme Securityholder:

- (a) is deemed to have appointed the Consortium Sub as attorney and agent (and directed the Consortium Sub in each such capacity) to appoint any director, officer, secretary or agent nominated by the Consortium Sub as its sole proxy and, where applicable or appropriate, corporate representative to attend Spark Securityholders' meetings, exercise the votes attaching to the Scheme Units and Scheme Shares registered in their name and sign any resolution or document;
- (b) must not attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 4.6 of this Schedule 2);
- (c) must take all other actions in the capacity of a registered holder of Scheme Units and Scheme Shares as the Consortium Sub reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in this clause 4.6 of this Schedule 2, the Consortium Sub and any director, officer, secretary or agent nominated by the Consortium Sub may act in the best interests of the Consortium Sub as the intended registered holder of the Scheme Units and Scheme Shares.

4.7 Unclaimed monies

- (a) The RE may cancel a cheque issued under this clause 4 if the cheque:
 - (1) is returned to the RE; or
 - (2) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Securityholder to the RE (or the Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), the RE must reissue a cheque that was previously cancelled under this clause 4.7.
- (c) The *Unclaimed Money Act 2008* (Vic) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of the *Unclaimed Money Act 2008* (Vic)).

4.8 Orders of a court or Government Agency

If written notice is given to the RE, the Registry or the Consortium Sub of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) requires consideration to be provided to a third party in respect of New Scheme Securities held by a particular Scheme Securityholder, which would otherwise be payable to that Scheme Securityholder by the RE in accordance with this



clause 4, the RE shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or

- (b) prevents the RE from providing consideration to any particular Scheme Securityholder in accordance with this clause 4, or the payment of such consideration is otherwise prohibited by applicable law, the RE shall be entitled to retain an amount, in Australian dollars, equal to the number of New Scheme Securities held by that Scheme Securityholder multiplied by the Scheme Consideration, until such time as provision of the Scheme Consideration in accordance with this clause 4 is permitted by that (or another) order or direction or otherwise by law.

5 Quotation of Spark Securities

- (a) The RE must apply to ASX to suspend trading of Spark Securities on the ASX with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by the Consortium Sub, the RE will apply for termination of the official quotation of Spark Securities on the ASX and to have Spark Infrastructure Group removed from the official list of the ASX.

6 General

6.1 Binding effect

- (a) This Schedule 2 binds the RE and all of the present and future Scheme Securityholders (including those who did not attend the Trust Scheme Meeting, did not vote at that meeting, or voted against the Trust Scheme Resolutions) and, to the extent of any inconsistency, overrides any other part of the Constitution.
- (b) The RE and, so far as is relevant, the Scheme Securityholders, must give effect to the Trust Scheme and the Transaction in accordance with its terms, and must do all things and execute all deeds, instruments, transfer or other documents as the RE considers are necessary or desirable to give effect to the terms of the Trust Scheme and the Transaction.
- (c) Each Scheme Securityholder agrees to the variation, cancellation or modification of the rights attached to their Scheme Securities, New Scheme Securities, Scheme Units and Scheme Shares, constituted by or resulting from the Trust Scheme and the Transaction.

6.2 RE's authority

- (a) Without limiting the RE's powers under this Schedule 2 or the Constituent Documents, the RE has power to do all things that it considers necessary or desirable to give effect to the Trust Scheme, the Transaction, the Implementation Deed and the transactions contemplated by them.
- (b) Each Scheme Securityholder, without the need for any further act:
 - (1) on the Effective Date, irrevocably appoints the RE and each of its directors, officers and secretaries (jointly and each of them severally)



as its attorney and agent for the purpose of enforcing the Deed Poll against the Consortium Sub, and the RE undertakes in favour of each Scheme Securityholder that it will enforce the Deed Poll against the Consortium Sub on behalf of and as agent and attorney for each Scheme Securityholder; and

- (2) on the Implementation Date, irrevocably appoints the RE and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to the Trust Scheme, the Transaction, and the transactions contemplated by them including executing the Scheme Transfer,

and the RE accepts each such appointment.

- (c) The RE, as attorney and agent of each Scheme Securityholder, may sub-delegate its functions, authorities or powers under this clause 6.1(a) to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).
- (d) Each Scheme Securityholder consents to the RE doing all things necessary or incidental to the implementation of the Trust Scheme, the Transaction and the transactions contemplated by them.

6.3 Joint holders

In the case of Scheme Securities, Scheme Units and Scheme Shares held in joint names:

- (a) any Scheme Shares to be distributed in respect of those Scheme Units pursuant to the Trust Scheme must be registered in the names of the joint holders;
- (b) subject to clause 6.3(c), any Scheme Consideration payable in respect of the Scheme Units and Scheme Shares is payable to the joint holders and any cheque required to be sent under the Trust Scheme will be made payable to the joint holders and sent to either, at the sole discretion of the RE, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders; and
- (c) any other document required to be sent to Scheme Securityholders under the Trust Scheme will be forwarded to either, at the sole discretion of the RE, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders.

6.4 CHESS Holdings

Each Scheme Securityholder who holds their Scheme Securities in a CHESS Holding agrees to the conversion of those Scheme Securities to an Issuer Sponsored Holding and irrevocably authorises the RE to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion.

6.5 Transaction a Stapling Matter

The Transaction is taken to be a Stapling Matter for the purposes of the Stapling Provisions.



6.6 Indemnity

The RE acknowledges that the indemnity under clause 11.3 of the Note Trust Deed covers any liability or loss arising from, and any reasonable Costs incurred by the Note Trustee in connection with, any act, omission, matter or thing to give effect to the Transaction.

6.7 Amendment

The RE may amend the Trust Scheme and, as applicable, this Schedule 2 if such amendment is not inconsistent with the approvals given by the Scheme Securityholders in the Trust Scheme Resolutions, and this Schedule 2 shall apply to the Trust Scheme as amended.

6.8 Further action

The RE must do all things and execute all documents necessary to give full effect to the Trust Scheme and the transactions contemplated by it.

7 Definitions

In this Schedule 2, unless the context otherwise requires:

Term	Meaning
Affiliate	an entity will be an Affiliate of another entity if it Controls the other entity, the other entity Controls the first entity, or both entities are under common Control.
ASIC	the Australian Securities and Investments Commission.
ASX	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
Business Day	a business day as defined in the Listing Rules and which is not a Saturday, Sunday or public holiday or bank holiday in Sydney, Australia.
CHESS	the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.
CHESS Holding	has the meaning given in the Settlement Rules.
Consortium Sub	Pika Bidco Pty Ltd ACN 652 787 258.



Constituent Documents	this constitution, the Note Trust Deed and the constitutions of Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 from time to time.
Control	has the meaning given in section 50AA of the Corporations Act. Also, for these purposes: 1 a trust will Control another entity if its trustee Controls the entity (disregarding for these purposes the operation of section 50AA(4) of the Corporations Act) in its capacity as trustee of the trust; 1 a partnership will Control another entity if a partner (including a general partner) Controls the entity (disregarding for these purposes the operation of section 50AA(4) of the Corporations Act) in its capacity as partner; and 2 a fund or investment vehicle will Control another entity if the responsible entity or manager of the fund or investment vehicle Controls the entity (disregarding for these purposes the operation of section 50AA(4) of the Corporations Act) in its capacity as responsible entity or manager of the fund or investment vehicle.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Costs	has the meaning given in Schedule 4 of the Note Trust Deed.
Court	the Supreme Court of New South Wales, or such other court of competent jurisdiction under the Corporations Act agreed to in writing by the RE and the Consortium Sub.
Creditors' Scheme	the scheme of arrangement under Part 5.1 of the Corporations Act between the RE and the Scheme Securityholders (as holders of Notes), in the form attached to the Implementation Deed, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by the Consortium Sub and the RE.
Deed Poll	the deed poll under which the Consortium Sub covenants in favour of the Scheme Securityholders to perform the obligations attributed to it under the Schemes.
Effective	1 in relation to the Trust Scheme, the coming into effect of the amendments to this constitution (which will occur on the date and at the time a copy of the amended constitution, or of the amendments, is lodged with ASIC under section 601GC(2) of the Corporations Act); and 2 in relation to the Creditors' Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) (and, if



applicable, section 411(6)) in relation to the Creditors' Scheme but in any event at no time before an office copy of the orders of the Court is lodged with ASIC.

Effective Date	the date on which the Schemes have both become Effective.
Encumbrances	mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the <i>Personal Property Securities Act 2009</i> (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.
Excluded Securityholder	any Spark Securityholder who is the Consortium Sub or an Affiliate of the Consortium Sub, or who holds any Spark Securities on behalf of, or for the benefit of, any of the Consortium Sub or an Affiliate of the Consortium Sub and does not hold Spark Securities on behalf of, or for the benefit of, any other person (including themselves).
Government Agency	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.
Implementation Date	the fifth Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as agreed in writing by the RE and the Consortium Sub.
Implementation Deed	the Implementation Deed between the RE and the Consortium Sub dated [insert] August 2021.
Issuer Sponsored Holding	has the meaning given in the Settlement Rules.
Listing Rules	the official listing rules of ASX.
New Scheme Security	a Stapled security comprising one Scheme Unit, one Spark Holdco 1 Share, one Spark Holdco 2 Share, one Spark Holdco 3 Share and one Scheme Note Stapled together, created as contemplated by clause 3 of this Schedule 2.
Note	has the same meaning as in the Constitution.



Note Trust Deed	has the same meaning as in the Constitution.
Note Trustee	has the same meaning as in the Constitution.
Operating Rules	the official operating rules of ASX.
Register	the register of holders of Spark Securities (and, after formation of the New Scheme Securities, the register of holders of New Scheme Securities) maintained in accordance with clause 5 of Schedule 1 and the Corporations Act.
Registered Address	in relation to a Spark Securityholder, the address shown in the Register as at the Scheme Record Date.
Registry	Boardroom Pty Limited ABN 14 003 209 836.
Scheme Consideration	the consideration to be provided by the Consortium Sub to each Scheme Securityholder for the transfer to the Consortium Sub of each Scheme Unit and Scheme Share, being for each Spark Security held by a Scheme Securityholder as at the Scheme Record Date: 1 in respect of the Scheme Units, an amount of \$2.30 per Scheme Unit; <i>less</i> the cash amount of any distributions to which Scheme Securityholders become entitled on or before the Implementation Date, including the first half interim distribution for 2021 of \$0.0625 per Spark Security announced by the RE on 1 July 2021, any 'Special Distribution' and any 'Final Distribution' (as those terms are defined in the Implementation Deed); <i>plus</i> the amount of any 'Additional Consideration' (as that term is defined in the Implementation Deed); and 2 in respect of the Scheme Shares, nil.
Scheme Note	a Note as at the Scheme Record Date.
Scheme Record Date	7.00pm on the fifth Business Day after the Effective Date, or such other Business Day after the Effective Date as may be agreed to in writing by the RE and the Consortium Sub.
Scheme Security	a Spark Security as at the Scheme Record Date.
Scheme Securityholder	each person who is registered as the holder of a Spark Security recorded in the Register as at the Scheme Record Date other than, for the purposes of clause 4 of this Schedule 2 only, an Excluded



Securityholder.

Scheme Share	a Spark Holdco 1 Share, a Spark Holdco 2 Share and a Spark Holdco 3 Share created as contemplated by clause 3.1 of this Schedule 2.
Scheme Transfer	a duly completed and executed proper instrument of transfer in respect of the New Scheme Securities (comprising Stapled Scheme Units, Scheme Shares and Scheme Notes) for the purposes of section 1071B of the Corporations Act, from Scheme Securityholders as transferors to the Consortium Sub as transferee, which may be a master transfer of all or part of the New Scheme Securities held by Scheme Securityholders.
Scheme Unit	a Unit as at the Scheme Record Date.
Schemes	the Trust Scheme and the Creditors' Scheme.
Settlement Rules	the ASX Settlement Operating Rules, being the official operating rules of the settlement facility provided by ASX Settlement Pty Ltd.
Spark Holdco 1	Spark Infrastructure Holdings No.1 Limited ACN 116 940 786.
Spark Holdco 1 Share	an A class share in Spark Holdco 1, which share confers on its holder a right to \$0.001c on a winding up of Spark Holdco 1 and no other voting, dividend, capital or other rights.
Spark Holdco 2	Spark Infrastructure Holdings No.2 Limited ACN 116 940 795.
Spark Holdco 2 Share	an A class share in Spark Holdco 2, which share confers on its holder a right to \$0.001c on a winding up of Spark Holdco 2 and no other voting, dividend, capital or other rights.
Spark Holdco 3	Spark Infrastructure Holdings No.3 Limited ACN 117 034 492.
Spark Holdco 3 Share	an A class share in Spark Holdco 3, which share confers on its holder a right to \$0.001c on a winding up of Spark Holdco 3 and no other voting, dividend, capital or other rights.
Spark Security	a Stapled security comprising one Unit and one Note Stapled together.



Spark Securityholder	each person who is registered as the holder of a Spark Security in the Register.
Stapled	has the same meaning as in the Constitution (as amended by this deed).
Stapling Provisions	has the same meaning as in the Constitution.
Transaction	has the meaning given in clause 1.1 of this Schedule 2.
Trust Account	has the meaning given in clause 4.2 of this Schedule 2.
Trust Scheme	an arrangement under which, among other transactions, the Consortium Sub acquires all of the Units and all Scheme Shares from Scheme Securityholders facilitated by amendments to the Constitution as set out in this Schedule 2 (as may be amended from time to time in accordance with clause 6.7 of this Schedule 2), subject to the requisite approvals of Scheme Securityholders.
Trust Scheme Meeting	a meeting of the Unitholders convened by the RE to consider the Trust Scheme Resolutions, and includes any adjournment of that meeting.
Trust Scheme Resolutions	the resolutions to approve the Trust Scheme, including: 1 a resolution for the purposes of section 601GC(1) of the Corporations Act to approve amendments to the Constitution as set out in a deed poll under which the RE amends the Constitution to effect the Trust Scheme; and 2 a resolution for the purposes of item 7 of section 611 of the Corporations Act to approve the acquisition of all the Units by the Consortium Sub.



Signing page

Executed as a deed poll

Signed sealed and delivered for
Spark Infrastructure RE Limited
by

sign here ► _____
Director

print name _____

sign here ► _____
Director/secretary

print name _____



HERBERT
SMITH
FREEHILLS

Scheme of arrangement – creditors' scheme

Spark Infrastructure RE Limited as responsible
entity of the Spark Infrastructure Trust

Scheme Securityholders

For personal use only



Scheme of arrangement – creditors' scheme

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

Between the parties

Spark Infrastructure RE Limited

ACN 114 940 984

as responsible entity of the **Spark Infrastructure Trust**
ARSN 116 870 725

of Level 29, 225 George Street, Sydney NSW 2000

(Spark RE)

The Scheme Securityholders

1 Definitions, interpretation and scheme components

1.1 Definitions

Schedule 1 contains definitions used in this Creditors' Scheme.

1.2 Interpretation

Schedule 1 contains interpretation rules for this Creditors' Scheme.

1.3 Scheme components

This Creditors' Scheme includes any schedule to it.

2 Preliminary matters

2.1 Parties

- (a) Spark RE is a public company limited by shares, registered in New South Wales, Australia.
- (b) Spark Investment Trust is a registered managed investment scheme. Spark RE is the responsible entity of the Spark Investment Trust.



- (c) Together, Spark RE and the Spark Infrastructure Trust comprise the Spark Infrastructure Group. The Spark Infrastructure Group has been admitted to the official list of the ASX.
- (d) As at the date of the Implementation Deed, 1,754,954,280 Spark Securities were on issue. Each Spark Security comprises one Unit Stapled to one Note, and they trade together as a stapled security on the ASX.
- (e) The Consortium Sub is Pika Bidco Pty Ltd ACN 652 787 258, an Australian proprietary company registered in Victoria that is wholly owned or controlled by related entities and affiliates of:
 - (1) PikaK Bidco Pte. Ltd. a company incorporated in Singapore (UEN 202128369W);
 - (2) 2857980 Ontario Limited a company incorporated in Ontario, Canada (Corporation Number 002857980); and
 - (3) Perpetual Corporate Trust Limited ACN 000 341 533 as trustee of the PSPIB Power Trust.

2.2 Schemes and related transactions

The Schemes and related transactions are intended to implement the following transactions (the **Transaction**):

- (a) Scheme Shares are created through the following steps:
 - (1) the rights attaching to one ordinary share in each of Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 are varied so that such ordinary share becomes an 'A class share'; and
 - (2) that A class share in each of Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 is subdivided into a number of A class shares in Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 (as applicable) as is in each case equal to the aggregate number of Spark Securities on issue as at the Scheme Record Date;
- (b) Spark RE distributes the Scheme Shares to Scheme Securityholders as a distribution of capital in accordance with the Spark Infrastructure Constitution to form the New Scheme Securities and, simultaneously with such distribution, the Scheme Shares are Stapled to the Spark Securities; and
- (c) the Consortium Sub acquires the New Scheme Securities in consideration for the Scheme Consideration in accordance with the Schemes.

The actions identified in this clause 2.2 will be implemented by Spark RE pursuant to and in accordance with the provisions of this Creditors' Scheme and the Implementation Deed.

The actions required to implement the Transaction will take place on the Implementation Date in the order set out above, with each action occurring immediately after the preceding action (except that, for the avoidance of doubt, the distribution and Stapling contemplated in clause 2.2(b) occur simultaneously).

2.3 Implementation Deed

Spark RE and the Consortium Sub have agreed, by executing the Implementation Deed, to implement the Transaction, including this Creditors' Scheme and the Trust Scheme.



2.4 Deed Poll

This Creditors' Scheme attributes actions to the Consortium Sub but does not itself impose an obligation on it to perform those actions. The Consortium Sub has agreed, by executing the Deed Poll, to perform the actions attributed to it under this Creditors' Scheme, including the provision or procuring the provision of the Scheme Consideration to the Scheme Securityholders.

3 Conditions

3.1 Conditions precedent

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

- (a) all the conditions in clause 3.1 of the Implementation Deed (other than the condition in the Implementation Deed relating to Court approval of this Creditors' Scheme) having been satisfied or waived in accordance with the terms of the Implementation Deed by 8.00am on the Second Court Date;
- (b) neither the Implementation Deed nor the Deed Poll having been terminated in accordance with their terms before 8.00am on the Second Court Date;
- (c) approval of this Creditors' Scheme by the Court under paragraph 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under subsection 411(6) of the Corporations Act and agreed to by the Consortium Sub and Spark RE;
- (d) such other conditions made or required by the Court under subsection 411(6) of the Corporations Act in relation to this Creditors' Scheme and agreed to by the Consortium Sub and Spark RE having been satisfied or waived;
- (e) the orders of the Court made under paragraph 411(4)(b) (and, if applicable, subsection 411(6)) of the Corporations Act approving this Creditors' Scheme coming into effect, pursuant to subsection 411(10) of the Corporations Act on or before the End Date (or any later date Spark RE and the Consortium Sub agree in writing); and
- (f) the Spark Infrastructure Trust Supplemental Deed taking effect pursuant to section 601GC(2) of the Corporations Act.

3.2 Certificate

- (a) Spark RE and the Consortium Sub will provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent were satisfied, waived or taken to be waived.

3.3 End Date

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

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



- (b) the Implementation Deed or the Deed Poll is terminated in accordance with its terms,

unless Spark RE and the Consortium Sub otherwise agree in writing.

4 Implementation of Creditors' Scheme

Spark RE must lodge with ASIC, in accordance with subsection 411(10) of the Corporations Act, an office copy of the Court order approving this Creditors' Scheme as soon as possible after the Court approves this Creditors' Scheme and in any event by 5.00pm on the first Business Day after the day on which the Court approves this Creditors' Scheme.

5 Scheme Securityholders

5.1 Determination of Scheme Securityholders

To establish the identity and addresses of the Scheme Securityholders, dealings in Spark Securities and other alterations to the Register will only be recognised if:

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

and Spark RE must not accept for registration, nor recognise for any purpose (except a transfer to the Consortium Sub pursuant to the Schemes and any subsequent transfer by the Consortium Sub or its successors in title), any transfer or transmission application or other request received after such times, or received before such times but not in registrable or actionable form, as appropriate.

5.2 Register

- (a) Spark RE must register, or cause to be registered, registrable transmission applications or transfers of the Scheme Securities in accordance with clause 5.1(b) by, or as soon as practicable after, the Scheme Record Date; provided that, for the avoidance of doubt, nothing in this clause 5.2(a) requires the registration of a transfer that would result in a Scheme Securityholder holding a parcel of Spark Securities that is less than a 'marketable parcel' (for the purposes of this clause 5.2(a) 'marketable parcel' has the meaning given in the Operating Rules).
- (b) If this Creditors' Scheme becomes Effective, a holder of Scheme Securities (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Securities or any interest in them after the Scheme Record Date (except a transfer to the Consortium Sub pursuant to the Schemes or any subsequent transfer by the Consortium Sub or its successors in title).
- (c) For the purpose of determining entitlements to the Scheme Consideration, Spark RE must maintain the Register in accordance with the provisions of this



clause 5.2 until the Scheme Consideration has been paid to the Scheme Securityholders. The Register in this form will solely determine entitlements to the Scheme Consideration.

- (d) All statements of holding for Spark Securities will cease to have effect after the Scheme Record Date as documents of title in respect of those Spark Securities and, as from that date and time, each entry current at that date on the Register (other than any entries on the Register in respect of the Consortium Sub) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Spark Securities relating to that entry.
- (e) As soon as possible on or after the Scheme Record Date, and in any event by 5.00pm on the first Business Day after the Scheme Record Date, Spark RE will ensure that details of the names, Registered Addresses and holdings of Spark Securities for each Scheme Securityholder as shown in the Register are available to the Consortium Sub in the form the Consortium Sub reasonably requires.

6 New Scheme Securities

6.1 Stapling

The determination by Spark RE that 1 Spark Holdco 1 Share, 1 Spark Holdco 2 Share and 1 Spark Holdco 3 Share will be Stapled to each Scheme Security pursuant to the Trust Scheme will take effect in relation to the Notes with effect from the date and time at which those Scheme Shares are distributed to Scheme Securityholders so that the distribution and Stapling occur simultaneously. From the time of the distribution, a reference to 'Stapled Securities' in the Stapling Provisions will mean a reference to the New Scheme Securities.

This determination will be effective notwithstanding the requirements set out in clause 6(b)(i), (ii) and (v) of Schedule 2 of the Note Trust Deed have not been met.

This Determination is taken to be a 'Stapling Matter' for the purposes of the Stapling Provisions.

For the avoidance of doubt, no Scheme Securityholder may at any time transfer or otherwise deal in Scheme Shares except as part of the Attached Securities.

6.2 Scheme Securityholders' appointment of Spark RE as attorney

Each Scheme Securityholder, without the need for any further act by any Scheme Securityholder, irrevocably appoints Spark RE and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of executing any document necessary or expedient to give effect to the transactions described in this clause 6 or doing any other act or thing necessary or desirable to give effect to this clause 6.

7 Acquisition

7.1 Agreement to transfer

Each Scheme Securityholder:



- (a) agrees to the transfer (at the same time as their other Spark Securities are transferred pursuant to the Trust Scheme) of all of their Scheme Notes and Scheme Shares to the Consortium Sub, together with all rights and entitlements attaching to those Scheme Notes and Scheme Shares, in consideration for the payment of the Scheme Consideration; and
- (b) without the need for any further act by any Scheme Securityholder, irrevocably appoints Spark RE and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of executing any document necessary or expedient to give effect to the transactions described in this clause 7 or doing any other act or thing necessary or desirable to give effect to this clause 7.

7.2 Provision of Scheme Consideration

- (a) Each Scheme Securityholder is entitled to receive the Scheme Consideration in respect of each Scheme Note and Scheme Share held by that Scheme Securityholder, subject to the terms of the Schemes.
- (b) Subject to clause 7.2(e), the Consortium Sub must, by no later than the Business Day before the Implementation Date, deposit, or procure the deposit, in cleared funds of an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Securityholders into an Australian dollar denominated trust account, which will be an account held with an Australian authorised deposit-taking institution, operated by Spark RE as trustee for the Scheme Securityholders (**Trust Account**) (except that any interest on the amounts deposited (less bank fees and other charges) will be to the Consortium Sub's account).
- (c) On the Implementation Date after the New Scheme Securities have been created in accordance with clause 6 and the Trust Scheme, subject to funds having been deposited in accordance with clause 7.2(a), Spark RE must pay or procure the payment of the Scheme Consideration from the Trust Account to each Scheme Securityholder to which they are entitled to under this clause 7.2.
- (d) The obligations of Spark RE under clause 7.2(c) will be satisfied by Spark RE (in its absolute discretion, and despite any election referred to in clause 7.2(d)(1) below or authority referred to in clause 7.2(d)(2) below made or given by the Scheme Securityholder):
 - (1) if a Scheme Securityholder has, before the Scheme Record Date, made a valid election in accordance with the requirements of the Registry to receive distribution payments from Spark RE by electronic funds transfer to a bank account nominated by the Scheme Securityholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
 - (2) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Securityholder by an appropriate authority from the Scheme Securityholder to Spark RE; or
 - (3) dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Securityholder by prepaid post to their Registered Address (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Securityholder (or in the case of joint holders, in accordance with the procedures set out in clause 10.3).



- (e) If the Consortium Sub is required by Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) to pay amounts to the Australian Taxation Office (**ATO**) in respect of the acquisition of Spark Securities from certain Scheme Securityholders, the Consortium Sub is permitted to deduct the relevant amounts from the payment of the Scheme Consideration to those Scheme Securityholders and remit such amounts to the relevant taxation authorities. The aggregate sum payable to Scheme Securityholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Scheme Securityholders shall be taken to be in full and final satisfaction of the amounts owing to those Scheme Securityholders. The Consortium Sub must pay any amount so withheld to the relevant taxation authorities within the time permitted by law, and, if requested in writing by the relevant Scheme Securityholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Scheme Securityholder.
- (f) To the extent that, following satisfaction of Spark RE's obligations under clause 7.2(c), there is a surplus in the amount held by Spark RE as trustee for the Scheme Securityholders in the Trust Account, that surplus must be paid by Spark RE to the Consortium Sub.
- (g) If, following satisfaction of Consortium Sub's obligations under clause 7.2(b) but prior to the occurrence of all of the events described in clause 7.3(a), this Scheme lapses under clause 3.3(b):
- (1) Spark RE must immediately repay (or cause to be repaid) to or at the direction of Consortium Sub the funds that were deposited in the Trust Account plus any interest on the amounts deposited (less bank fees and other charges); and
 - (2) the obligation to transfer New Scheme Securities, together with all rights and entitlements attaching to the New Scheme Securities as at the Implementation Date, to Consortium Sub under 7.3(a) will immediately cease.
- (h) Where the calculation of the Scheme Consideration to be provided to a particular Scheme Securityholder would result in the Scheme Securityholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded down to the nearest cent.

7.3 Transfer to Consortium Sub

- (a) On the Implementation Date:
- (1) after the Consortium Sub has given Spark RE written confirmation of the provision of the Scheme Consideration, all of the Scheme Notes held by Scheme Securityholders, together with all rights and entitlements attaching to those Scheme Notes as at the Implementation Date, and together with the Spark Holdco 1 Shares, Spark Holdco 2 Shares and Spark Holdco 3 Shares Stapled to those Scheme Notes, will be transferred to the Consortium Sub without the need for any further act by any Scheme Securityholder (other than acts performed by Spark RE (or its directors or officers) as attorney and agent for the Scheme Securityholders under clause 10.2) by:
 - (A) Spark RE delivering to the Consortium Sub a duly executed Scheme Transfer, executed on behalf of the Scheme Securityholders by Spark RE, for registration; and



- (B) the Consortium Sub duly executing the Scheme Transfer as transferee, attending to the stamping of the Scheme Transfer (if required) and delivering it to Spark RE, Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 for registration; and
- (2) following receipt of the Scheme Transfer in accordance with clause 7.3(a)(1)(B), but subject to the stamping of the Scheme Transfer (if required), Spark RE must immediately register, and (as necessary) take all steps within its power to cause the registration by Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 (as applicable) of, the transfers of the New Scheme Securities, and enter, and (as necessary) take all steps within its power to cause the entry by Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 (as applicable) of, the name of the Consortium Sub in the Register in respect of all New Scheme Securities transferred to it under clause 7.3(a)(1)), at the same time as Spark RE enters, or procures the entry of, the name of the Consortium Sub in the Register in respect of all other New Scheme Securities transferred to it in accordance with the Trust Scheme.
- (b) Without limiting clause 7.3(a)(1), each Scheme Securityholder:
- (1) assigns to the Consortium Sub its right to be paid that Scheme Securityholder's principal outstanding (and any accrued but unpaid interest) on the Scheme Notes it holds as a debt, and the Consortium Sub accepts that assignment;
- (2) releases Spark RE from all Claims and obligations (including representations and warranties) to the extent such Claims or obligations arise under the Note Trust Deed in respect of, or in relation to, the Scheme Notes held by the Scheme Securityholder;
- (3) waives all rights against Spark RE to the extent such rights arise under the Note Trust Deed in respect of, or in relation to, the Scheme Notes held by the Scheme Securityholder;
- (4) releases each other person that is a Scheme Securityholder and Spark RE from all Claims and obligations under or in connection with the Creditors' Scheme and the Transaction; and
- (5) covenants not to:
- (A) sue, demand, commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against any other person that is a Scheme Securityholder or Spark RE any action, suit or other proceeding arising out of or in connection with or concerning the Creditors' Scheme and the Transaction, in this jurisdiction or any other; or
- (B) give any instructions or directions to any person through whom that person that is a Scheme Securityholder holds its Scheme Notes or would be entitled to enforce that Scheme Securityholder's rights under or in connection with the Scheme Notes to do any of the things referred to in clause 7.3(b)(5)(A).



7.4 Scheme Securityholders' warranties

Each Scheme Securityholder warrants to Spark RE and the Consortium Sub, and appoints and authorises Spark RE as its attorney and agent to warrant to the Consortium Sub, that as at the Implementation Date:

- (a) all their Scheme Notes and Scheme Shares (including any rights and entitlements attaching to those Scheme Notes and Scheme Shares) which are transferred to the Consortium Sub will, at the date they are transferred to the Consortium Sub, be fully paid and free from all Encumbrances; and
- (b) they have full power and capacity to sell and to transfer their Scheme Notes and Scheme Shares (including any rights and entitlements attaching to those Scheme Notes and Scheme Shares) to the Consortium Sub.

Spark RE must provide such warranties to the Consortium Sub as agent and attorney of each Scheme Securityholder.

7.5 Title to and rights in New Scheme Securities

- (a) To the extent permitted by law, the Scheme Notes and Scheme Shares (including all rights and entitlements attaching to the Scheme Notes and Scheme Shares) transferred to the Consortium Sub will, at the time of transfer vest in the Consortium Sub free from all Encumbrances.
- (b) Immediately upon payment of the Scheme Consideration in accordance with clauses 7.2(c) and 7.2(d), the Consortium Sub will be beneficially entitled to the Scheme Notes and Scheme Shares to be transferred to it under this Creditors' Scheme pending registration by Spark RE, Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 of the Consortium Sub in the Register as the holder of the relevant Scheme Notes and Scheme Shares.

7.6 Appointment of sole proxy

Immediately upon the provision of the Scheme Consideration to each Scheme Securityholder, and until the Consortium Sub is registered as the holder of all New Scheme Securities in the Register, each Scheme Securityholder:

- (a) is deemed to have appointed the Consortium Sub as attorney and agent (and directed the Consortium Sub in each such capacity) to appoint any director, officer, secretary or agent nominated by the Consortium Sub as its sole proxy and, where applicable or appropriate, corporate representative to attend Spark Securityholders' meetings, exercise the votes attaching to the Scheme Notes and Scheme Shares registered in their name and sign any resolution or document;
- (b) must not attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 7.6(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Notes and Scheme Shares as the Consortium Sub reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 7.6(a), the Consortium Sub and any director, officer, secretary or agent nominated by the Consortium Sub may act in the best interests of the Consortium Sub as the intended registered holder of the Scheme Notes and Scheme Shares.



7.7 Unclaimed monies

- (a) Spark RE may cancel a cheque issued under this clause 7 if the cheque:
 - (1) is returned to Spark RE; or
 - (2) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Securityholder to Spark RE (or the Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), Spark RE must reissue a cheque that was previously cancelled under this clause 7.7.
- (c) The *Unclaimed Money Act 2008* (Vic) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of the *Unclaimed Money Act 2008* (Vic)).

7.8 Orders of a court or Government Agency

If written notice is given to Spark RE, the Registry or the Consortium Sub of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) requires consideration to be provided to a third party in respect of New Scheme Securities held by a particular Scheme Securityholder, which would otherwise be payable to that Scheme Securityholder by Spark RE in accordance with this clause 7, Spark RE shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
- (b) prevents Spark RE from providing consideration to any particular Scheme Securityholder in accordance with this clause 7, or the payment of such consideration is otherwise prohibited by applicable law, Spark RE shall be entitled to retain an amount, in Australian dollars, equal to the number of New Scheme Securities held by that Scheme Securityholder multiplied by the Scheme Consideration, until such time as provision of the Scheme Consideration in accordance with this clause 7 is permitted by that (or another) order or direction or otherwise by law.

8 Quotation of Spark Securities

- (a) Spark RE must apply to ASX to suspend trading in Spark Securities on the ASX with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by the Consortium Sub, Spark RE will apply for termination of the official quotation of Spark Securities on the ASX and to have Spark Infrastructure Group removed from the official list of the ASX.



9 Spark RE limitation of liability

9.1 Capacity

Spark RE is bound by this Creditors' Scheme only in its capacity as responsible entity of the Spark Infrastructure Trust and in no other capacity. Subject to clause 9.3, Spark RE will not be personally liable under or in respect of this Creditors' Scheme.

9.2 Limitation of liability

Subject to this clause 9:

- (a) a liability of Spark RE arising under or in connection with this Creditors' Scheme is limited and can be enforced against Spark RE only to the extent to which it can be satisfied out of property of the Spark Infrastructure Trust and for which Spark RE is actually indemnified out of property of the Spark Infrastructure Trust. This limitation of Spark RE's liability extends to all liabilities and obligations of Spark RE in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Creditors' Scheme, any other document in connection with it, or the Spark Infrastructure Trust;
- (b) the Spark Securityholders may not sue Spark RE in any capacity other than as responsible entity and trustee for the Spark Infrastructure Trust, including seeking the appointment of a receiver, a liquidator, an administrator or similar person to Spark RE or prove in any liquidation, administration or arrangement of or affecting Spark RE (except in each case in relation to property of the Spark Infrastructure Trust); and
- (c) Spark RE is not liable in contract, tort or otherwise to the Spark Securityholders for any loss suffered in any way relating to the Spark Infrastructure Trust except to the extent that the Corporations Act imposes such liability.

9.3 Limitation of liability provisions do not apply

- (a) The limitation of liability provisions in this clause 9 will not apply to any obligation or liability of Spark RE to the extent that it is not satisfied because, under this Creditors' Scheme or any other document in connection with it, or by operation of law, there is a reduction in the extent of Spark RE's indemnification out of the property of the Spark Infrastructure Trust as a result of Spark RE's fraud, negligence or breach of trust.
- (b) It is also acknowledged that a breach of an obligation imposed on, or a representation or warranty given by, Spark RE under or in connection with this Creditors' Scheme or any other document in connection with it will not be considered a breach of trust by Spark RE unless Spark RE has acted with negligence, or without good faith, in relation to the breach.
- (c) No act or omission of Spark RE (including any related failure to satisfy its obligations under this Creditors' Scheme) shall be considered fraud, negligence or breach of trust of Spark RE for the purpose of clause 9.3(a) to the extent that the act or omission was caused or contributed to by any failure by any other person to fulfil its obligations relating to Spark RE or by any other act or omission of any such other person.



9.4 Application

This clause 9 applies despite any other provisions of this Creditors' Scheme or any principle of equity or law to the contrary.

10 General

10.1 Binding effect

- (a) This Creditors' Scheme binds Spark RE and all of the present and future Scheme Securityholders (including those who did not attend the Creditors' Scheme Meeting, did not vote at that meeting, or voted against this Creditors' Scheme at that meeting) and, to the extent of any inconsistency, overrides the Note Trust Deed.
- (b) Spark RE and, so far as is relevant, the Scheme Securityholders, must give effect to this Creditors' Scheme and the Transaction in accordance with its terms, and must do all things and execute all deeds, instruments, transfer or other documents as Spark RE considers are necessary or desirable to give effect to the terms of this Creditors' Scheme and the Transaction.
- (c) Each Scheme Securityholder agrees to the variation, cancellation or modification of the rights attached to their Scheme Securities, New Scheme Securities, Scheme Notes and Scheme Shares constituted by or resulting from this Creditors' Scheme and the Transaction.

10.2 Spark RE's authority

- (a) Without limiting Spark RE's powers under this Creditors' Scheme or the Constituent Documents, Spark RE has power to do all things that it considers necessary or desirable to give effect to this Creditors' Scheme, the Transaction, the Implementation Deed and the transactions contemplated by them.
- (b) Each Scheme Securityholder, without the need for any further act:
 - (1) on the Effective Date, irrevocably appoints Spark RE and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of enforcing the Deed Poll against the Consortium Sub, and Spark RE undertakes in favour of each Scheme Securityholder that it will enforce the Deed Poll against the Consortium Sub on behalf of and as agent and attorney for each Scheme Securityholder; and
 - (2) on the Implementation Date, irrevocably appoints Spark RE and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to this Creditors' Scheme, the Transaction and the transactions contemplated by them, including executing the Scheme Transfer,and Spark RE accepts each such appointment.
- (c) Spark RE as attorney and agent of each Scheme Securityholder, may sub-delegate its functions, authorities or powers under this clause 10.2 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).



- (d) Each Scheme Securityholder consents to Spark RE doing all things necessary or incidental to the implementation of this Creditors' Scheme, the Transaction and the transactions contemplated by them.

10.3 Joint holders

In the case of Scheme Securities, Scheme Notes and Scheme Shares held in joint names:

- (a) subject to clause 10.3(b), any Scheme Consideration payable in respect of the Scheme Notes and Scheme Shares is payable to the joint holders and any cheque required to be sent under this Creditors' Scheme will be made payable to the joint holders and sent to either, at the sole discretion of Spark RE, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders; and
- (b) any other document required to be sent to Scheme Securityholders under this Creditors' Scheme will be forwarded to either, at the sole discretion of Spark RE, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders.

10.4 CHESS Holdings

Each Scheme Securityholder who holds their Scheme Securities in a CHESS Holding agrees to the conversion of those Scheme Securities to an Issuer Sponsored Holding and irrevocably authorises Spark RE to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion.

10.5 Consent to amendments to this Creditors' Scheme

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

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

10.6 Stamp duty

The Consortium Sub will:

- (a) pay all stamp duty and any related fines and penalties in respect of this Creditors' Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under or in connection with this Creditors' Scheme and the Deed Poll; and
- (b) indemnify each Scheme Securityholder against any liability arising from failure to comply with clause 10.6(a).

10.7 Further action

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

10.8 No liability when acting in good faith

Each Scheme Securityholder agrees that neither Spark RE, nor any director, officer, secretary or employee of Spark RE shall be liable for anything done or omitted to be done in the performance of this Creditors' Scheme or the Deed Poll in good faith.

10.9 Notices

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

10.10 Governing law

- (a) This Creditors' Scheme is governed by the laws in force in Victoria, Australia.
- (b) The parties irrevocably submit to the exclusive jurisdiction of courts exercising jurisdiction in Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Creditors' Scheme. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.



Schedule 1

Definitions and interpretation

1 Definitions

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

Term	Meaning
Affiliate	an entity will be an Affiliate of another entity if it Controls the other entity, the other entity Controls the first entity, or both entities are under common Control.
ASIC	the Australian Securities and Investments Commission.
ASX	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
Attached Security	has the meaning given to it in the Note Trust Deed, provided that 'New Attached Security' has the meaning given to it in this Creditors' Scheme.
Business Day	a business day as defined in the Listing Rules and which is not a Saturday, Sunday or public holiday or bank holiday in Sydney, Australia.
CHESS	the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.
CHESS Holding	has the meaning given in the Settlement Rules.
Claim	any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent or otherwise whether at law, in equity, under statute or otherwise.
Consortium Sub	Pika Bidco Pty Ltd ACN 652 787 258.



Constituent Documents	the Spark Infrastructure Trust Constitution, the Note Trust Deed and the constitutions of Spark Holdco 1, Spark Holdco 2 and Spark Holdco 3 from time to time.
Control	has the meaning given in section 50AA of the Corporations Act. Also, for these purposes: 1 a trust will Control another entity if its trustee Controls the entity (disregarding for these purposes the operation of section 50AA(4) of the Corporations Act) in its capacity as trustee of the trust; 1 a partnership will Control another entity if a partner (including a general partner) Controls the entity (disregarding for these purposes the operation of section 50AA(4) of the Corporations Act) in its capacity as partner; and 2 a fund or investment vehicle will Control another entity if the responsible entity or manager of the fund or investment vehicle Controls the entity (disregarding for these purposes the operation of section 50AA(4) of the Corporations Act) in its capacity as responsible entity or manager of the fund or investment vehicle.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Court	the Supreme Court of New South Wales, or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Spark RE and the Consortium Sub.
Creditors' Scheme	this scheme of arrangement under Part 5.1 of the Corporations Act between Spark RE and the Noteholders subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Spark RE and the Consortium Sub.
Creditors' Scheme Meeting	the meeting of Spark Securityholders, as holders of Notes, ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on this Creditors' Scheme, and includes any meeting convened following any adjournment or postponement of that meeting.
Deed Poll	the deed poll substantially in the form of Attachment 1 under which the Consortium Sub covenants in favour of the Scheme Securityholders to perform the obligations attributed to it under the Schemes.
Effective	1 in relation to the Trust Scheme, the coming into effect of the amendments to the Spark Infrastructure Constitution (which will occur on the date and at the time a copy of the amended Spark Infrastructure Constitution, or of the amendments, is lodged with ASIC under section 601GC(2) of the Corporations Act); and 2 in relation to this Creditors' Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders



of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) in relation to this Creditors' Scheme but in any event at no time before an office copy of the orders of the Court is lodged with ASIC.

Effective Date	the date on which the Schemes have both become Effective.
Encumbrances	mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the <i>Personal Property Securities Act 2009</i> (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.
End Date	24 May 2022, or such other date as agreed in writing by the Consortium Sub and Spark RE.
Excluded Securityholder	any Spark Securityholder who is the Consortium Sub or an Affiliate of the Consortium Sub, or who holds any Spark Securities on behalf of, or for the benefit of, the Consortium Sub or an Affiliate of the Consortium Sub and does not hold Spark Securities on behalf of, or for the benefit of, any other person (including themselves).
Government Agency	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.
Implementation Date	the fifth Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as agreed in writing by Spark RE and the Consortium Sub.
Implementation Deed	the Implementation Deed between Spark RE and the Consortium Sub dated on or about 23 August 2021.
Issuer Sponsored Holding	has the meaning given in the Settlement Rules.
Listing Rules	the official listing rules of ASX.
New Attached Security	has the meaning given to it in the Note Trust Deed, and includes each Scheme Share.



New Scheme Security	a Stapled security comprising one Scheme Unit, one Spark Holdco 1 Share, one Spark Holdco 2 Share, one Spark Holdco 3 Share and one Scheme Note Stapled together, created as contemplated by clause 6 and the Trust Scheme.
Note	a loan note issued by Spark RE under the terms of the Note Trust Deed.
Note Trust Deed	the Spark Infrastructure Note Trust Deed dated 9 November 2005, as amended by: 1 Note Trust Deed – Supplemental Deed No. 1 (Terms Of Issue) dated 25 October 2010; 2 Note Trust Deed – Supplemental Deed No. 2 (Restructure Effective Date Amendments) dated 8 November 2010; and 3 Note Trust Deed – Supplemental Deed No. 3 (Restructure Implementation Date Amendments) dated 10 December 2010, and as rectified by deed of rectification dated 31 March 2011.
Noteholder	each person who is registered as the holder of a Note in the Register.
Operating Rules	the official operating rules of ASX.
Other Attached Security	has the meaning given to it in the Note Trust Deed, provided that 'New Attached Security' has the meaning given to it in this Creditors' Scheme.
Register	the register of holders of Spark Securities (and, after formation of the New Scheme Securities, the register of holders of New Scheme Securities) maintained in accordance with clause 8 of the Note Trust Deed and the Corporations Act.
Registered Address	in relation to a Spark Securityholder, the address shown in the Register as at the Scheme Record Date.
Registry	Boardroom Pty Limited ABN 14 003 209 836.
Scheme Consideration	the consideration to be provided by the Consortium Sub to each Scheme Securityholder for the transfer to the Consortium Sub of each Scheme Note and Scheme Share, being for each Spark Security held by a Scheme Securityholder as at the Scheme Record Date: 1 in respect of the Scheme Notes, an amount equal to \$0.65 per Scheme Note; and 2 in respect of the Scheme Shares, nil.



Scheme Note	a Note as at the Scheme Record Date.
Scheme Record Date	7.00pm on the fifth Business Day after the Effective Date, or such other Business Day after the Effective Date as may be agreed to in writing by Spark RE and the Consortium Sub.
Scheme Security	a Spark Security as at the Scheme Record Date.
Scheme Securityholder	each person who is registered as the holder of a Spark Security recorded in the Register as at the Scheme Record Date other than, for the purposes of clause 7 only, an Excluded Securityholder.
Scheme Share	a Spark Holdco 1 Share, a Spark Holdco 2 Share and a Spark Holdco 3 Share created as contemplated by clause 2.2 and the Trust Scheme.
Scheme Transfer	a duly completed and executed proper instrument of transfer in respect of the New Scheme Securities (comprising Stapled Scheme Units, Scheme Shares and Scheme Notes) for the purposes of section 1071B of the Corporations Act, from Scheme Securityholders as transferors to the Consortium Sub as transferee, which may be a master transfer of all or part of the New Scheme Securities held by Scheme Securityholders.
Scheme Unit	a Unit as at the Scheme Record Date.
Schemes	this Creditors' Scheme and the Trust Scheme.
Second Court Date	the first day on which an application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving this Creditors' Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application or appeal is heard.
Settlement Rules	the ASX Settlement Operating Rules, being the official operating rules of the settlement facility provided by ASX Settlement Pty Ltd.
Spark Holdco 1	Spark Infrastructure Holdings No.1 Limited ACN 116 940 786.



Spark Holdco 1 Share	an A class share in Spark Holdco 1, which share confers on its holder a right to \$0.001c on a winding up of Spark Holdco 1 and no other voting, dividend, capital or other rights.
Spark Holdco 2	Spark Infrastructure Holdings No.2 Limited ACN 116 940 795.
Spark Holdco 2 Share	an A class share in Spark Holdco 2, which share confers on its holder a right to \$0.001c on a winding up of Spark Holdco 2 and no other voting, dividend, capital or other rights.
Spark Holdco 3	Spark Infrastructure Holdings No.3 Limited ACN 117 034 492.
Spark Holdco 3 Share	an A class share in Spark Holdco 3, which share confers on its holder a right to \$0.001c on a winding up of Spark Holdco 3 and no other voting, dividend, capital or other rights.
Spark Infrastructure Trust Constitution	the constitution establishing the Spark Infrastructure Trust as amended from time to time.
Spark Infrastructure Trust Supplemental Deed	a deed poll under which Spark RE will amend the Spark Infrastructure Trust Constitution to effect the Trust Scheme.
Spark RE	Spark Infrastructure RE Limited ACN 114 940 984 as responsible entity of the Spark Infrastructure Trust ARSN 116 870 725.
Spark Security	a Stapled security comprising one Unit and one Note Stapled together.
Spark Securityholder	each person who is registered as the holder of a Spark Security in the Register.
Stapled	the linking together of securities so that one Attached Security may not be transferred or otherwise dealt with without the Other Attached Securities. Stapling is to be construed accordingly.
Stapling Provisions	has the meaning given in the Note Trust Deed.
Transaction	has the meaning given in clause 2.2(a).
Trust Account	has the meaning given in clause 7.2(a).



Trust Scheme an arrangement under which, among other transactions, the Consortium Sub acquires all of the Units and all Scheme Shares from Scheme Securityholders facilitated by amendments to the Spark Infrastructure Trust Constitution the form of which is attached as Attachment 2 to the Implementation Deed (as may be amended from time to time in accordance with the Spark Infrastructure Trust Constitution, as amended), subject to the requisite approvals of Scheme Securityholders.

Unit a fully paid unit in the Spark Infrastructure Trust.

2 Interpretation

2.1 Interpretation

In this Creditors' Scheme:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Creditors' Scheme;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Creditors' Scheme have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Creditors' Scheme;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or reenactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this Creditors' Scheme) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to Australian currency;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney, New South Wales;
- (k) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1 of this Schedule 1, has the same meaning when used in this Creditors' Scheme;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;



- (m) no provision of this Creditors' Scheme will be construed adversely to a party because that party was responsible for the preparation of this Creditors' Scheme or that provision;
- (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a reference to a body (including an institute, association or authority), other than a party to this Creditors' Scheme, whether statutory or not:
- (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,
- is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (p) a reference to an agreement other than this Creditors' Scheme includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (q) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (r) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (s) if an act prescribed under this Creditors' Scheme to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day; and
- (t) a reference to the Listing Rules and the Operating Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

2.2 Interpretation of inclusive expressions

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

2.3 Business Day

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



Attachment 1

Deed Poll

Attached.

For personal use only



Attachment 3

Deed poll

Attached.

For personal use only



HERBERT
SMITH
FREEHILLS

Deed Poll

Scheme deed poll

Pika Bidco Pty Ltd

For personal use only



Scheme deed poll

Date ►

This deed poll is made

By	Pika Bidco Pty Ltd ACN 652 787 258 of c/- TMF Corporate Services (Aust) Pty Limited, Level 16, 201 Elizabeth Street, Sydney, NSW 2000 (Consortium Sub)
in favour of	Spark Infrastructure RE Limited (Spark RE) as responsible entity of the Spark Infrastructure Trust and each Scheme Securityholder as at the Scheme Record Date (other than the Excluded Securityholders).
Recitals	1 Spark RE and the Consortium Sub entered into the Implementation Deed. 2 In the Implementation Deed, the Consortium Sub agreed to make this deed poll. 3 The Consortium Sub is making this deed poll for the purpose of covenanting in favour of the Scheme Securityholders to perform its obligations under the Implementation Deed and the Schemes.

This deed poll provides as follows:

1 Definitions and interpretation

1.1 Definitions

(a) The meanings of the terms used in this deed poll are set out below.

Term	Meaning
First Court Date	the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Creditors' Scheme Meeting and to seek the First Judicial Advice is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.



Term	Meaning
Implementation Deed	the scheme implementation deed entered into between Spark RE and the Consortium Sub dated on or about 23 August 2021.
Schemes	the Trust Scheme and the Creditors' Scheme.
(b)	Unless the context otherwise requires, terms defined in the Creditors' Scheme have the same meaning when used in this deed poll.

1.2 Interpretation

Section 2 of Schedule 1 of the Creditors' Scheme applies to the interpretation of this deed poll, except that references to 'this Creditors' Scheme' are to be read as references to 'this deed poll'.

1.3 Nature of deed poll

The Consortium Sub acknowledges that:

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

2 Conditions to obligations

2.1 Conditions

This deed poll and the obligations of the Consortium Sub under this deed poll are subject to the Schemes becoming Effective.

2.2 Termination

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

- (a) the Implementation Deed is terminated in accordance with its terms; or
 - (b) the Schemes are not Effective on or before the End Date,
- unless the Consortium Sub and Spark RE otherwise agree in writing.



2.3 Consequences of termination

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

- (a) the Consortium Sub is released from its obligations to further perform this deed poll except those obligations under clause 6.1; and
- (b) each Scheme Securityholder retains the rights they have against the Consortium Sub in respect of any breach of this deed poll which occurred before it was terminated.

3 Scheme obligations

Subject to clause 2 and the terms of the Schemes:

- (a) the Consortium Sub undertakes in favour of each Scheme Securityholder to:
 - (1) do all things that it is required to do under each of the Schemes; and
 - (2) undertake all other actions, and give each acknowledgement, representation and warranty (if any), attributed to it under the Schemes;
- (b) the Consortium Sub undertakes in favour of each Scheme Securityholder to deposit, or procure the deposit of, in cleared funds, by no later than the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Securityholders under the Schemes into an Australian dollar denominated trust account operated by Spark RE as trustee for the Scheme Securityholders, except that any interest on the amounts deposited (less bank fees and other charges) will be credited to the Consortium Sub's account,

subject to and in accordance with the terms of the Schemes.

4 Warranties

The Consortium Sub represents and warrants in favour of each Scheme Securityholder that:

- (a) it is validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) this deed poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.



5 Continuing obligations

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

- (a) the Consortium Sub has fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.

6 General

6.1 Stamp duty

The Consortium Sub:

- (a) will pay all stamp duty and any related fines and penalties in respect of the Schemes and this deed poll, the performance of this deed poll and each transaction effected by or made under or in connection with the Schemes and this deed poll; and
- (b) indemnifies each Scheme Securityholder against any liability arising from failure to comply with clause 6.1(a).

6.2 Governing law and jurisdiction

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

6.3 Waiver

- (a) The Consortium Sub may not rely on the words or conduct of any Scheme Securityholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Securityholder granting the waiver.
- (b) No Scheme Securityholder may rely on words or conduct of the Consortium Sub as a waiver of any right unless the waiver is in writing and signed by the Consortium Sub.
- (c) The meanings of the terms used in this clause 6.3 are set out below.

Term	Meaning
conduct	includes delay in the exercise of a right.
right	any right arising under or in connection with this deed poll and includes the right to rely on this clause.



waiver

includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

6.4 Variation

A provision of this deed poll may not be varied unless:

- (a) if before the First Court Date, the variation is agreed to by Spark RE; or
- (b) if on or after the First Court Date, the variation is agreed to by Spark RE and the Court indicates that the variation would not of itself preclude approval of the Schemes,

in which event the Consortium Sub will enter into a further deed poll in favour of the Scheme Securityholders giving effect to the variation.

6.5 Cumulative rights

The rights, powers and remedies of the Consortium Sub and the Scheme Securityholders under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

6.6 Assignment

- (a) The rights created by this deed poll are personal to the Consortium Sub and each Scheme Securityholder and must not be dealt with at law or in equity without the prior written consent of Spark RE.
- (b) Any purported dealing in contravention of clause 6.6(a) is invalid.

6.7 Further action

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



HERBERT
SMITH
FREEHILLS

Attachment 1

Schemes

Attached

For personal use only



Signing page

Executed as a deed poll

Executed by Pika Bidco Pty Ltd ACN 652 787 258 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____



HERBERT
SMITH
FREEHILLS

Attachment 4

Conditions Precedent certificate

Attached.

For personal use only



Conditions precedent certificate

Spark Infrastructure RE Limited (ACN 114 940 984) (**Spark RE**), and Pika Bidco Pty Ltd (ACN 652 787 258) (**Consortium Sub**) certify, confirm and agree that each of the conditions precedent:

- 1 in clause 3.1 (other than the condition in clause 3.1(g) relating to Court approval) of the scheme implementation deed dated on or about 23 August 2021 between Spark RE and the Consortium Sub (**SID**) has been satisfied or is hereby waived by the relevant party to the SID in accordance with the terms of the SID;
- 2 in clause 3.1(a) and clause 3.1(b) of the scheme of arrangement between Spark RE and the holders of notes issued by Spark RE, which appears in Annexure **[insert]** of Spark RE's scheme booklet dated **[insert date]** has been satisfied.

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

Dated: **[insert date]**

Executed as a deed

Signed sealed and delivered by
Spark Infrastructure RE Limited
by

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____



Executed by Pika Bidco Pty Ltd ACN 652 787 258 in accordance with section
127 of the *Corporations Act 2001* (Cth) by:

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____
