

ASX Announcement (UWL) Update to Exclusivity Arrangements

24 March 2022: Uniti Group Limited (Uniti or Company) advises that it has, this afternoon, agreed to terminate the existing exclusivity deed it entered into with HRL Morrison & Co. on behalf of its managed funds and clients (**Morrison & Co**) (**Existing Exclusivity Deed**) and enter into a new exclusivity deed with Morrison & Co and Brookfield Infrastructure Group (Australia) Pty Ltd (**Brookfield**) as a joint bidder (**New Exclusivity Deed**). The New Exclusivity Deed is on substantially the same terms as the Existing Exclusivity Deed. For completeness, the full terms of the New Exclusivity Deed are annexed to this announcement.

These discussions continue to be non-binding, preliminary, highly conditional and uncertain as to an outcome.

As announced to the market earlier today, the Board is also considering the Connect Consortium Indicative Proposal it received yesterday afternoon.

Uniti will continue to update shareholders, in accordance with the Company's continuous disclosure obligations, of further developments as they arise.

Authorised for release by the Board of Directors.

- ENDS -

FURTHER INFORMATION

For further information, contact as below:

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Annexure – New Exclusivity Deed



Exclusivity Deed

Date 24 March 2022

Parties **Uniti Group Limited ACN 158 957 889** of Level 1, 44 Currie Street, Adelaide, South Australia 5000 (**Target**)

HRL Morrison & Co (Australia) Pty Limited ACN 073 922 102 of Level 31, 60 Martin Place Sydney, New South Wales 2000 (**MCo**)

Brookfield Infrastructure Group (Australia) Pty Ltd ACN 127 051 174 of 'Brookfield Place', Level 19 10 Carrington Street Sydney NSW 2000 (**BFD**)

(MCo and BFD together, **Bidder**)

Background

- A. Target and MCo, and Target and BFD have each entered into a confidentiality agreement on 14 March 2022 and or around the date of this deed respectively (each a **Confidentiality Agreement**) each in respect of the Approved Purpose and each on substantially the same terms.
- B. In order to facilitate Bidder conducting due diligence and further consideration of a Transaction by the parties, Target has agreed to grant a period of exclusivity to Bidder on the terms and conditions of this deed.
- C. Target and MCo have also entered into an exclusivity agreement dated 14 March 2022 in respect of the Approved Purpose (**Existing Exclusivity Deed**), which is terminated and replaced in accordance with the terms of this deed.

Operative Provisions

1. Definitions

In this deed:

Unless otherwise defined, all defined terms have the meaning given to them in the Confidentiality Agreement (as applicable, it being acknowledged that the defined terms in each Confidentiality Agreement are substantially the same).

Agreed Fee means A\$5 million.

Approach Letter means the MCo non-binding indicative offer letter dated 13 March 2022.

Associate has the meaning set out in section 12 of the Corporations Act.

Competing Proposal means any proposal, agreement, arrangement or transaction which, if entered into or completed, would result in a Third Party (either alone or together with any Associate):

- (a) directly or indirectly acquiring a relevant interest in, or having a right to acquire, a legal, beneficial or economic interest in, or control of, 20% or more of the securities in any member of the Target Group;
- (b) acquiring Control of Target;
- (c) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all

or a substantial part of Target's business or assets or the business or assets of the Target Group;

- (d) otherwise directly or indirectly acquiring or merging with Target; or
- (e) requiring Target 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.

Each successive material modification or variation of a Competing Proposal will constitute a new Competing Proposal.

Control has the meaning given in section 50AA of the Corporations Act, disregarding subsection 50AA(4).

Data Room Open Date means 18 March 2022.

End Date means the date that is six months after the date of this deed.

Exclusivity Period means subject to clause 4(b), the period commencing on the date of this deed and ending on the date that is four weeks after the Data Room Open Date, or such later date as Target and Bidder agree in writing.

Fee Payment Date means:

- (a) in respect of clauses 3.1(a) or 3.1(c), 10 Business Days after the date on which the relevant event occurs; or
- (b) in respect of clause 3.1(b), the date on which a relevant legally binding agreement is entered into or a takeover bid is announced that is recommended by the Target Board.

Implementation Agreement means an implementation agreement or deed to be entered into between Target and Bidder or its nominee for the purposes of the Transaction, which agreement will reflect any agreed terms and conditions as at the date of this deed (which must, for the avoidance of doubt but without limitation, include the price, terms and conditions reflected in the Approach Letter).

Phase One Documents means documents relating to high priority due diligence items as agreed between the parties in accordance with clause 4(a).

Phase Two Documents means documents relating to low and medium priority due diligence items as agreed between the parties in accordance with clause 4(a).

Superior Proposal a bona fide Competing Proposal which the Target Board, acting in good faith, and after receiving advice from its advisers, determines:

- (a) is reasonably capable of being completed; and
- (b) would be more favourable to Target shareholders than the latest proposal provided by Bidder to Target,

taking into account all aspects of the Competing Proposal and the latest proposal provided by Bidder to Target, including conditions, the identity, reputation and financial condition of the person making the proposal and all relevant legal, regulatory and financial matters (including the value and type of consideration, funding, any timing considerations, any conditions precedent or other matters affecting the probability of the proposal being completed).

Target Board means the board of directors of the Target.

Target Group means the Target and each of its Related Entities, and a reference to a '**Target Group Member**' or a '**member of the Target Group**' is to Target or any of its Related Entities.

Target Material Adverse Event means any matter directly concerning the operations and affairs of Target which has resulted in, or is reasonably likely to result in a diminution in the net assets of the Target Group by an amount equal to 7.5% or more, as compared to what the net assets of the Target Group could reasonably be expected to have been but for the relevant matter, other than a matter:

- (a) disclosed to ASX prior to the date of this document or in a document lodged with any Regulatory Authority that is publicly available prior to the date of this document;
- (b) that is within the actual knowledge of Bidder or its Related Entities as at the date of this deed;
- (c) arising from any change in any law, or rule or regulation of any Regulatory Authority, or any change in generally accepted accounting standards;
- (d) arising from general economic, business or financial market conditions or changes in those conditions that impact Australian businesses generally;
- (e) arising from an act of terrorism, war, natural disaster or adverse weather conditions or the like; or
- (f) arising from the COVID-19 virus (or any mutation, variation or derivative), or from any law, order, rule or direction of any Regulatory Authority in relation thereto.

1.2 Interpretation

In this deed headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to **information** includes information communicated, received or held orally, in writing, electronically or in any other form;
- (e) a reference to a **person** includes an individual, the estate of an individual, a corporation, a Regulatory Authority, an incorporated or unincorporated association or parties in a joint venture, a partnership and a trust;
- (f) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (g) a reference to a document or a provision of a document is to that document or provision as varied, novated, ratified or replaced from time to time;
- (h) a reference to this deed is to this deed as varied, novated, ratified or replaced from time to time;
- (i) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

- (j) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (k) a reference to **\$** or **dollar** is to Australian currency; and
- (l) this deed must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

1.3 Existing Exclusivity Agreement

Target and MCo agree that the Existing Exclusivity Agreement is terminated with effect on and from the date of this deed.

2. Exclusivity

2.1 No shop

During the Exclusivity Period, Target must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) solicits, invites, encourages or initiates any enquiries, expressions of interest, offers, proposals, negotiations or discussions; or
- (b) communicates any intention to do any of these things,

with a view to obtaining, or that may be reasonably expected to encourage or lead to, a Competing Proposal.

2.2 No talk

Subject to clause 2.4, during the Exclusivity Period, Target must not, and must ensure that each of its Representatives does not, directly or indirectly:

- (a) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person which would reasonably be expected to lead to the making of, a Competing Proposal; or
- (b) negotiate, accept or enter into any agreement, arrangement or understanding regarding a Competing Proposal,

even if the relevant Competing Proposal was not directly or indirectly solicited, invited, encouraged, facilitated or initiated by Target, any other Target Group Member, or a Representative of a Target Group Member or the relevant person has publicly announced the Competing Proposal.

2.3 No due diligence

Subject to clause 2.4, during the Exclusivity Period, Target must not, and must ensure that each of its Representatives does not, directly or indirectly disclose or otherwise make available any non-public information about the business, assets or affairs of the Target Group or provide access to any Target officers or employees to a Third Party (other than a Regulatory Authority) with a view to obtaining, or which would reasonably be expected to lead to receipt of, a Competing Proposal (including providing such information for the purposes of the conduct of due diligence investigations in respect of the Target Group) whether by that Third Party or another person.

2.4 Fiduciary exception

Clauses 2.2 and 2.3 do not prohibit any action or inaction by Target, any Target Group Member, or any of their respective Representatives in relation to a bona fide, actual, proposed or potential Competing Proposal if the Target Board, acting in good faith, has determined:

- (a) after consultation with Target's advisors, that the Competing Proposal could reasonably be expected to lead to a Superior Proposal; and
- (b) after receiving advice from Target's reputable external Australian legal advisers specialising in the area of corporate law, that compliance with clauses 2.2 or 2.3 (as applicable) would, or would be reasonably likely to, constitute a breach of any of the fiduciary or statutory duties of any member of the Target Board,

provided that the Competing Proposal was not brought about by, or in respect of which there has not been, a breach of clause 2.1.

2.5 Non-public information

- (a) Subject to clause 2.5(b), if during the Exclusivity Period any non-public information about the business or affairs of Target Group is provided or made available to any person in connection with an actual, proposed or potential Competing Proposal which has not previously been provided or made available to Bidder, Target must promptly, and in any event within 2 Business Days of the date on which such non-public information has been provided or made available to such person, provide to Bidder:
 - (i) in the case of written materials, a copy of; and
 - (ii) in any other case, a written statement of, that non-public information.
- (b) Clause 2.5(a) does not require Target to provide or make available to Bidder any information which Target reasonably considers is likely to disclose information relating to that other person which is commercially sensitive information of that person.

2.6 Notification of approaches

- (a) During the Exclusivity Period, Target must as soon as reasonably practicable (and in any event within 24 hours) notify Bidder in writing if it, or any of its Representatives, becomes aware of any:
 - (i) negotiations, discussions or other communications, or approach, in relation to a Competing Proposal;
 - (ii) approach or proposal made to Target or any of its Representatives, in connection with, or in respect of any exploration or completion of, a Competing Proposal; or
 - (iii) provision by Target or any of its Representatives of any material non-public information concerning the business or operations of Target or the Target Group to any Third Party (other than a Regulatory Authority) in connection with a Competing Proposal,whether direct or indirect, solicited or unsolicited, and in writing or otherwise.
- (b) A notification given under clause 2.6(a) must include all material terms and conditions of the Competing Proposal, including as to value and price, and details of and the identity of the proposed bidder or acquirer, to the extent known by Target or its Representatives.

2.7 Compliance with law

- (a) If it is finally determined by a court of competent jurisdiction, or the Takeovers Panel, that the agreement by the parties under this clause 2 or any part of it:
- (i) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the Target Board;
 - (ii) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or
 - (iii) was, or is, or would be, unlawful for any other reason,
- then, to that extent (and only to that extent) Target will not be obliged to comply with that provision of clause 2.
- (b) The parties must not make or cause to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 2.7.

2.8 Usual provision of information

Nothing in this clause 2 prevents Target from:

- (a) providing any information to its Representatives;
- (b) providing any information to any Regulatory Authority;
- (c) providing any information required to be provided by any applicable law, including to satisfy its obligations to any Regulatory Authority;
- (d) providing any information to its auditors, clients, financiers, joint venturers, suppliers, contractual counterparties or shareholders; or
- (e) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts and other third parties, and engaging with financiers and potential financiers.

3. Agreed Fee

3.1 Payment of Agreed Fee

Target must, on the relevant Fee Payment Date, pay to Bidder the Agreed Fee in cleared and immediately available funds (without withholding or set off) into a bank account(s) and in the proportions notified in writing to Target by Bidder (there being no more than 2 bank accounts for the purposes of this clause) if any of the following occurs:

- (a) on or before the end of the Exclusivity Period, Target has breached any material provision of this deed and Target does not remedy that breach within 5 Business Days of receipt of written notice of such breach from Bidder; or
- (b) a member of the Target Group has, before the end of the Exclusivity Period, received a Competing Proposal and, on or before the End Date:
 - (i) a member of the Target Group has entered into any legally binding scheme implementation agreement, bid implementation agreement or similar to give effect to a Superior Proposal in respect of that Competing Proposal; or
 - (ii) a person (either alone or with other persons) has made, or has publicly announced their proposal to make, a takeover bid under Chapter 6 of the Corporations Act for ordinary shares in Target in respect of that

Competing Proposal and such a takeover bid has been recommended by the Target Board; or

- (c) during the Exclusivity Period, a matter directly concerning the operations and affairs of Target which existed, and was known to Target (including the impact of that matter if the impact of the matter can reasonably be determined), at the date of this deed but was not public, becomes public or otherwise known to Bidder or its Representatives, in circumstances where:
 - (i) Target's failure to disclose that matter prior to the date of this deed constituted a breach of Target' continuous disclosure obligations; and
 - (ii) the matter constitutes a Target Material Adverse Event.

3.2 Acknowledgement

The parties agree that the Agreed Fee is an amount to compensate Bidder for:

- (a) advisory costs;
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses (including any domestic or international travel costs (whether by air, land, sea or otherwise));
- (d) the distraction of Bidder's management from conducting Bidder's business as usual caused by pursuing a Transaction;
- (e) reasonable opportunity costs incurred by Bidder in pursuing a Transaction or in not pursuing alternative acquisitions or strategic initiatives which Bidder could have developed to further its business and objectives; and
- (f) damage to Bidder's reputation associated with a failed transaction and the implications of that damage to Bidder's business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the Agreed Fee.

3.3 Other claims

The maximum aggregate amount which Target is required to pay in relation to this deed (including any breach of this deed by Target) is the Agreed Fee and in no event will the aggregate liability of Target under or in connection with this deed exceed the Agreed Fee.

3.4 Exclusive remedy

Notwithstanding any other provision under this deed, where the Agreed Fee is paid to Bidder under this deed, Bidder cannot make any claim against Target, its Related Entities or their respective directors, officers and employees under or in connection with this deed.

4. Exclusivity extension

- (a) To the extent not already agreed as at the date of this deed, the parties must use reasonable endeavours to agree the Phase One Documents and Phase Two Documents as soon as practicable after the date of this deed and the Target must use reasonable endeavours to populate a virtual data room with the Phase One Documents and Phase Two Documents as soon as practicable after the date of this deed.
- (b) If Target has not populated the virtual data room with the Phase Two Documents agreed by the parties by 28 March 2022, the parties acknowledge and agree that the Exclusivity Period will automatically be extended by one week.

5. No obligation to proceed

Without limiting clause 2, the parties acknowledge and agree that:

- (a) the Transaction remains non-binding and there is no obligation on any party to proceed with or consummate the Transaction; and
- (b) either Bidder or Target has the right to terminate any discussions or negotiations in connection with the Transaction,

unless and until a definitive, legally binding agreement is entered into to give effect to the Transaction.

6. Confidentiality

Target and Bidder agree that the existence and content of this deed constitutes 'Confidential Information' for the purposes of the Confidentiality Agreements (as applicable).

7. Notice

- (a) Target and Bidder agree that clause 13 (*Notice*) of the Confidentiality Agreements (as applicable) shall apply to each communication (including each notice, consent, approval, request and demand) under or in connection with this deed as if the references to 'this agreement' are to 'this deed'.
- (b) Each communication given by Bidder must be given by MCo and BFD jointly.

8. General

8.1 Amendments

This deed may only be varied by a document signed by or on behalf of each party.

8.2 Assignment

A party cannot assign or otherwise transfer any of its rights under this deed without the prior consent of each other party.

8.3 Consents

Unless this deed expressly provides otherwise, a consent under this deed may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

8.4 Costs

Each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

8.5 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts.

8.6 Entire agreement

To the extent permitted by law, in relation to its subject matter, this deed and the Confidentiality Agreement embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties, and supersedes any previous agreement by the parties.

8.7 Severance

If any provision or part of a provision of this deed is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

8.8 Waivers

Without limiting any other provision of this deed, the parties agree that:

- (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed;
- (b) a waiver given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party; and
- (c) no waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

8.9 Term and termination

- (a) This deed, and the parties' obligations under it, will terminate on the earliest of the following to occur:
 - (i) the expiry of the Exclusivity Period; and
 - (ii) the parties executing an Implementation Agreement.
- (b) No party may terminate or rescind this deed except as permitted under this clause 8.9.
- (c) The parties acknowledge and agree that clause 3 (Agreed Fee) (including any obligation to pay and entitlement to receive payment of an Agreed Fee) shall remain operative whether or not that right arises before, on or after termination of this deed.

9. Governing law and jurisdiction

This deed is governed by the law applying in New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within this clause 9.

Executed as a deed.

Executed by UNITI GROUP LIMITED in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

Graeme R C Barclay

Full name of director



Vaughan Bowen (Mar 24, 2022 12:44 GMT+11)

Signature of company secretary/director

Vaughan Bowen

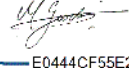
Full name of company secretary/director

**Executed by HRL MORRISON & CO
(AUSTRALIA) PTY LIMITED** in accordance with
section 127 of the Corporations Act 2001 (Cth):

DocuSigned by:

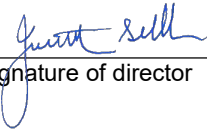
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Signature of director

Paul Newfield
Full name of director

DocuSigned by:

E0444CF55E284EE...
Signature of company secretary/director

Mark Goodrick
Full name of company secretary/director

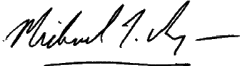
**Executed by BROOKFIELD
INFRASTRUCTURE GROUP (AUSTRALIA)
PTY LTD** in accordance with section 127 of the
Corporations Act 2001 (Cth):



Signature of director

Jonathon Sellar

Full name of director



Signature of company secretary/~~director~~

Michael Ryan

Full name of company secretary/~~director~~