

Execution version



Government of **Western Australia**
Department of **Treasury**
Strategic Projects

Eastern Goldfields Regional Prison Redevelopment Project

Tender Number: **BMW 213419/11**

Finance Side Deed

The State of Western Australia represented by the Minister for Works, a body corporate constituted under section 5 of the *Public Works Act 1902 (WA)* and the Honourable Murray John Cowper MLA, Minister for Corrective Services (**State**)

Assure Partners (EGRP) 1 Pty Ltd ACN 160 900 149 as trustee of the Assure Partners (EGRP) Unit Trust 1 for and on behalf of the Assure Partners (EGRP) Partnership

Assure Partners (EGRP) 2 Pty Ltd ACN 161 471 316 as trustee of the Assure Partners (EGRP) Unit Trust 2 for and on behalf of the Assure Partners (EGRP) Partnership

(together, **Project Co**)

Stella EGRP Finance Pty Limited ACN 153 050 198 (**Finance Co**)

CBA Corporate Services (NSW) Pty Limited ACN 072 765 434
(**Security Trustee**)

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Date

Parties

The State of Western Australia represented by the Minister for Works, a body corporate constituted under section 5 of the Public Works Act 1902 (WA) and the Honourable Murray John Cowper MLA, Minister for Corrective Services(**State**)

Assure Partners (EGRP) 1 Pty Ltd (ACN 160 900 149) as trustee of the Assure Partners (EGRP) Unit Trust 1 for and on behalf of the Assure Partners (EGRP) Partnership; and

Assure Partners (EGRP) 2 Pty Ltd (ACN 161 471 316) as trustee of the Assure Partners (EGRP) Unit Trust 2 for and on behalf of the Assure Partners (EGRP) Partnership,

of Level 8, 136 Exhibition Street, Melbourne VIC 3000 (together, **Project Co**)

Stella EGRP Finance Pty Limited (ACN 153 050 198) of Level 8, 136 Exhibition Street, Melbourne VIC 3000 (**Finance Co**)

CBA Corporate Service (NSW) Pty Limited (ACN 072 765 434) of Level 14, 385 Bourke Street, Melbourne VIC 3000 (**Security Trustee**)

Background

- A. The background to the Project is set out in the Agreement.
- B. In accordance with the Financing Documents, financial accommodation is to be provided to Finance Co for the purpose of enabling Project Co to perform and comply with its obligations in accordance with the Agreement.
- C. It is a condition of the financial accommodation that Project Co grants to the Security Trustee, Encumbrances over Project Co's rights, title and interests in the Project.
- D. This document recognises the Encumbrances held by the State and the Security Trustee in connection with the Project.

1. Definitions and interpretation

1.1 General

Unless the context otherwise requires, or where defined in Clause 1.2, capitalised terms in this document have the meaning given to them in clause 1.1 (Definitions) of the Agreement.

1.2 Definitions

In this document:

Agreement means the document entitled "Eastern Goldfields Regional Prison Redevelopment Project - Project Agreement" between the State and Project Co dated on or about the date of this document.

Beneficiaries means the beneficiaries identified from time to time in accordance with the Security Trust Deed.

Charged Property has the meaning given to it in the State Deed of Charge.

Consent Deed means each consent deed referred to in the definition of Financing Documents.

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person and includes any Security Interest.

Enforcing Party means any agent, attorney, trustee (including a trustee in bankruptcy, receiver, or similar officer), receiver and manager, administrator, liquidator or provisional liquidator appointed in accordance with any Security and including a mortgagee in possession.

Equity Interest means the securities issued by, or other ownership interests in, a Project Entity or the Partnership.

Finance Default means:

- (a) any event of default (however described) in the Financing Documents; or
- (b) any event which entitles a Finance Party to cease to make available financial accommodation in connection with a Project Entity's Financial Indebtedness (other than voluntary cancellation of financial accommodation by a Project Entity in accordance with the Financing Documents and the State Project Documents).

Finance Party means:

- (a) the Security Trustee; and
- (b) each Financier and Beneficiary and each other future beneficiary of the trust established in accordance with the Security Trust Deed.

Financiers' Cure Program means the cure program developed in accordance with Clause 4.3(a) as amended from time to time in accordance with this document.

Financiers' Securities means:

- (a) each "Security" (as defined in the Common Terms Deed); and
- (b) any other Security Interest which is at any time collateral to any of the Financing Documents.

Fit and Proper Person means, in connection with a person:

- (a) if that person is a registered liquidator in accordance with the guidelines issued from time to time by the Australian Securities and Investments Commission, that person is not otherwise a person who, if that person acquired Control of a Project Entity, the State would be entitled to withhold its consent to such change on the basis of criteria in paragraph (v) of clause 46.6(f) (Change in Control) of the Agreement; or
- (b) if that person does not fall within paragraph (a) is not a person who, if that person acquired Control of a Project Entity, the State would be entitled to withhold its consent to such a change on the basis of any one of the criteria in paragraphs (i), (iii), (iv), (v) or (vi) of clause 46.6(f) (Change in Control) of the Agreement.

PA Default Event means an:

- (a) Event of Default; and
- (b) Immediate Termination Event,

each in accordance with the Agreement.

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

Permitted Encumbrance has the meaning given in the State Deed of Charge.

Permitted Security Interest has the meaning given in the Common Terms Deed.

Project Account means the "Project Accounts" as defined in the Common Terms Deed and any other account of a Project Entity with a Finance Party.

Project Entity means each of:

- (a) Project Co; and
- (b) Finance Co.

Project Entity's Rights means a Project Entity's rights in accordance with the Project Documents.

Securities means:

- (a) the State Deed of Charge; and
- (b) the Financiers' Securities,

and "**Security**" means each or any one of them (as applicable).

Security Interest means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind, and includes:

- (a) a security interest in section 12 of the PPSA;
- (b) anything which gives a creditor priority to other creditors with respect to any asset; and
- (c) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

Security Trust means the trust established under clause 2 of the Security Trust Deed.

State Priority Moneys means all amounts owed to the State in accordance with clause 39.8 (State may effect Insurances), clause 43 (Step-in by the State) and clause 44 (Termination) of the Agreement.

1.3 Interpretation

In this document unless the context otherwise requires:

- (a) (**references**): references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a trust, or trustee or a partnership;
- (b) (**includes**): the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) (**or**): the meaning of "or" will be that of the inclusive "or", that is meaning one, some or all of a number of possibilities;
- (d) (**party**): a reference to a "party" is to a party to this document;

- (e) **(other persons)**: a reference to any party or person includes each of their legal representatives, trustees, executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (f) **(Authority)**: a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, a reference to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as applicable; and
 - (ii) if that Authority, institute, association or body ceases to exist, a reference to the organisation which serves substantially the same purposes or objectives as that Authority, institute, association or body;
- (g) **(this document)**: a reference to this document or to any other deed, agreement, document or instrument includes a reference to this document or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (h) **(Legislation)**: a reference to any legislation or to any section or provision of it includes any amendment to or re-enactment of, or any statutory provision substituted for, that legislation, section or provision;
- (i) **(rights)**: a reference to a right includes any benefit, remedy, discretion, authority or power;
- (j) **(singular)**: words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (k) **(headings)**: headings are for convenience only and do not affect the interpretation of this document;
- (l) **(inclusive)**: a reference to this document includes all Schedules and Attachments;
- (m) **(Clauses)**: a reference to:
 - (i) a Clause or Schedule is a reference to a Clause or Schedule of or to this document; and
 - (ii) a paragraph is a reference to a paragraph in the Clause in which the reference appears;
- (n) **(defined meaning)**: where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (o) **(\$)**: a reference to "\$" is to Australian currency;
- (p) **(time)**: a reference to time is a reference to Australian Western Standard Time;
- (q) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;
- (r) **(construction)**: no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this document or any part;

- (s) **(information)**: a reference to "information" includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (t) **(may)**: the term may, when used in the context of a power or right exercisable by the State, means that the State can exercise that right or power in its absolute and unfettered discretion and the State has no obligation to a Project Entity to do so;
- (u) **(remedy)**: the use of the word "remedy" or any form of it in this document means that the event to be remedied must be cured or its effects overcome;
- (v) **(no double counting)**: if this document requires calculation of an amount payable to a party there should be no double counting in calculating that amount;
- (w) **(PPSA)**: each of the terms "financing statement" and "financing change statement" have the meanings given to them in the PPSA; and
- (x) **(writing)**: references to a notice, request, Claim, consent, approval, record or report means that the notice, request, Claim, consent, approval, record or report must be in writing unless otherwise agreed by the parties or expressly stated in this document.

1.4 Related matters

- (a) **(Provisions limiting or excluding Liability)**: Any provision of this document which seeks either expressly or by implication to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.
- (b) **(Business Day)**: If the day on or by which any thing is to be done in accordance with this document is not a Business Day, that thing must be done on the next Business Day.
- (c) **(Consents)**: A consent or approval in accordance with this document from the State or a State Representative may be given or withheld, or may be given subject to such conditions (other than the payment of money), as the State or a State Representative (in its absolute discretion) considers fit, unless this document provides otherwise.

1.5 Capacity of Security Trustee

- (a) Clause 1.14 (Security Trustee's limitation of liability) of the Common Terms Deed applies to this document as if set out in full (but as if all references in that clause to "this deed" were references to "this document").
- (b) Without limiting any indemnity given to the Security Trustee at law, the parties to this document acknowledge that, subject to and in accordance with the Security Trust Deed, the Security Trustee is indemnified out of the Secured Property (as defined in the Common Terms Deed) against any liability or loss arising from, and any costs properly incurred in connection with, complying with its obligations, and exercising its rights and discretions, under this document.
- (c) The other parties to this document acknowledge that the Security Trustee may assign its rights and novate (or otherwise transfer) its obligations under this document to any replacement security trustee that is appointed in accordance with the Security Trust Deed. The other parties agree to enter into a novation deed with any such replacement security trustee in a form acceptable to the

Security Trustee and such replacement security trustee (and, if the rights or obligations of the replacement security trustee would differ from those of the Security Trustee, on terms acceptable to the other parties).

1.6 Order of precedence

To the extent of any inconsistency, ambiguity or discrepancy between this document and any other State Project Document, this document prevails.

1.7 Project Documents

The Security Trustee agrees that it has received a copy of the Project Documents.

1.8 Financing Documents

Each Project Entity represents and agrees that:

- (a) before the date of this document, it has fully disclosed to the State the terms of the Financing Documents; and
- (b) those Financing Documents (together with the Equity Documents) are, on the date of this document, the only documents governing or creating each Project Entity's Financial Indebtedness.

1.9 Assumptions

Each other party to this document may assume that the Security Trustee has been duly appointed, that its appointment has not been terminated or suspended (or the terms of its appointment materially amended) and that it is authorised to give any instruction, notice, consent or direction which it purports to give in accordance with this document. Any payment to be made or notice to be given or communication to be made to a Financier may be made to the Security Trustee (or as it may direct).

1.10 Continuance of rights

- (a) This document does not affect the obligations, rights, powers or remedies of a party in accordance with a Project Document, except to the extent expressly provided in this document.
- (b) The failure by a party (other than a Project Entity) to comply with the provisions of this document does not affect the Liability of any Project Entity in accordance with any other Project Document.

1.11 Project Documents

The State acknowledges and agrees that, subject to the terms of this document, while the Security Trustee is taking any step to enforce the Financiers' Securities and during the appointment of any Enforcing Party by the Security Trustee, the State will continue to observe the terms of the Project Documents to which it is a party.

1.12 Representations and warranties

Each party represents and warrants to each other party that:

- (a) it has power to enter into this document and perform its obligations in accordance with or as contemplated by this document and all necessary action has been taken to authorise its execution, delivery and performance;
- (b) this document constitutes its valid and binding obligations enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganisation,

insolvency, moratorium or similar laws affecting creditors' rights generally and subject to the availability of equitable remedies; and

- (c) the execution by it of, the performance by it of its obligations in accordance with, and the compliance by it with the provisions of, this document does not and will not contravene any Law to which it is subject.

1.13 Conditions Precedent

The satisfaction or waiver of the Conditions Precedent in accordance with the Agreement, is a condition precedent to the coming into operation of this document (other than this Clause 1.13).

1.14 Further State delegations

- (a) The State may at any time delegate the exercise of any power or authority of the State Representative in accordance with this document to a person other than the State Representative and may terminate or vary that delegation.
- (b) In connection with any delegation in accordance with paragraph (a), the State will promptly notify Project Co and the Security Trustee of the identity of each delegate, the powers and authority delegated (including any conditions applying to the delegated power) and of any termination or variation to that delegation.
- (c) Any direction given by a State delegate in accordance with its delegation in accordance with this Clause 1.14 will be deemed to be a direction of the State.

2. Consent to Securities

2.1 Consent by the State

The State:

- (a) consents to the Financiers' Securities and the Security Interests created thereunder;
- (b) agrees that, following enforcement of the Financiers' Securities, an Enforcing Party may, but is not obliged to, exercise all or any of the powers conferred under or in connection with the Financiers' Securities;
- (c) agrees that the Encumbrances created in accordance with the Financiers' Securities are Permitted Encumbrances for the purpose of the State Deed of Charge; and
- (d) acknowledges it will consider any request by Project Co under clause 49 (Model Variation Events) of the Agreement to update the Financial Model reasonably and having regard to the informational needs of the Security Trustee and the Beneficiaries under the Financing Documents.

2.2 Consent by Security Trustee

- (a) The Security Trustee consents to the State Deed of Charge.
- (b) The Security Trustee agrees that the State Deed of Charge is a Permitted Security Interest for the purposes of the Financing Documents.

2.3 Nature of consents

Neither the State, nor the Security Trustee by the consents given in Clauses 2.1 and 2.2, respectively have:

- (a) approved the terms of any document;
- (b) agreed, affirmed, represented or warranted the validity or enforceability or binding nature of any document; or
- (c) consented to any document granting or creating any interest in any right, title or property other than as set out in this document (including as expressly noted in Clauses 2.1 and 2.2).

3. Order of priorities

3.1 Priority of handover obligations

Subject to Clause 8.2(b), each of Project Co and the Security Trustee agrees that the State's rights in accordance with clause 32 (Handover) of the Agreement has priority over any rights granted to the Security Trustee.

3.2 Priority of Securities

The parties agree that the order of priority of payment between the Financiers' Securities and the State Deed of Charge is:

- (a) **(State Priority Moneys)**: firstly, the State Deed of Charge for all State Priority Moneys due and payable at that time;
- (b) **(Debt)**: secondly, the Financiers' Securities for the aggregate of:
 - (i) Debt; and
 - (ii) amounts other than Debt due and payable by a Project Entity because of a breach of a Financing Document at that time;
- (c) **(State Deed of Charge)**: thirdly, the State Deed of Charge for any amounts secured by them at that time, other than the State Priority Moneys paid in accordance with paragraph (a); and
- (d) **(Financiers' Securities)**: fourthly, the Financiers' Securities for any amount secured by them at that time other than those to which paragraph (b) applies,

and any funds so received pursuant to the enforcement of powers under a Security or another Security Interest granted by a Project Entity (including by set off) will be applied by them in the above order of priority.

3.3 Provisions apply despite anything to the contrary

The provisions of Clause 3.2 apply notwithstanding:

- (a) **(other terms)**: anything contained in the Financiers' Securities or the State Deed of Charge;
- (b) **(dates of execution)**: the date or order of execution or registration of any of the Securities or any financing statement or financing change statement;

- (c) **(order or moneys)**: the order in which any moneys may be or may have been advanced or deemed to be or have been advanced or become or became payable or secured in accordance with the respective Securities;
- (d) **(payment or repayment)**: the payment or repayment in whole or in part from time to time of the money secured by the Financiers' Securities or the State Deed of Charge;
- (e) **(fluctuations in secured amounts)**: any fluctuation in the amount secured by the Financiers' Securities or the State Deed of Charge from time to time;
- (f) **(acts and omissions)**: the respective dates on which anything is done or omitted to be done in accordance with or in connection with the Financiers' Securities or the State Deed of Charge;
- (g) **(payment dues)**: the moneys secured by the Financiers' Securities or the State Deed of Charge being contingently payable or not due for payment; or
- (h) **(contrary law)**: any rule of law or equity to the contrary.

3.4 Application of payments

For the purposes of giving effect to the agreed order of priority under Clause 3.2, the parties agree that any moneys received by the State, the Security Trustee or an Enforcing Party on enforcement of any of the Securities will be applied in the following order of priority:

- (a) firstly, *pari passu* towards the reasonable costs, charges and expenses of the State, the Security Trustee or any Enforcing Party appointed in accordance with a Security incurred in the enforcement of a Security;
- (b) secondly, towards the remuneration of an Enforcing Party;
- (c) thirdly, towards the remuneration of the Security Trustee;
- (d) fourthly, to the State and the Security Trustee in accordance with the priorities set out in Clause 3.2; and
- (e) fifthly, any surplus amount is to be paid to an account in the name of a Project Entity with any bank nominated by Project Co. That surplus will not carry interest while held by the State, the Security Trustee or an Enforcing Party.

3.5 Contingent liabilities

If the Securities secure contingent liabilities to the State or the Security Trustee then, until the State or the Security Trustee is satisfied that the contingent Liability has been extinguished, the State or the Security Trustee may retain from the proceeds of a realisation of their respective Security an amount consistent with the order and amount of priority established in accordance with Clause 3.2 which they reasonably estimate to be the amount of the contingent Liability.

3.6 Enforcement by the State

- (a) **(No enforcement without consent)**: Subject to paragraph (c), for so long as there are amounts secured by the Financiers' Securities or until termination of the Agreement (whichever is earlier), the State will not:
 - (i) take any action in or towards exercising any right, power or remedy in accordance with the State Deed of Charge; or

- (ii) petition for (or vote in favour of any resolution for) or initiate or support or take steps with a view to any insolvency, liquidation, reorganisation, administration, or dissolution proceedings or any voluntary arrangement or assignment for the benefit of creditors or the termination or dissolution of a Project Entity,

without first obtaining the consent of the Security Trustee (which consent must not be unreasonably withheld), unless and to the extent that it is necessary for the State to exercise its Step-in Rights under the Agreement and the State Deed of Charge in respect to an Emergency.

- (b) **(Priority of enforcement action):** Subject to paragraph (c):

- (i) any enforcement action in accordance with the Financiers' Securities by the Security Trustee or an Enforcing Party appointed by a Finance Party will take precedence over any enforcement action by the State or an Enforcing Party appointed in accordance with the State Deed of Charge; and
- (ii) if an Enforcing Party is appointed in connection with any property in accordance with the Financiers' Securities, the Enforcing Party may upon notice to the State, assume possession and control of that property from any Enforcing Party in possession and control of that property in accordance with any State Deed of Charge and the State Deed of Charge will not preclude or restrict the free dealing with the property by such an Enforcing Party, notwithstanding the security created by or any provision of any State Deed of Charge to the contrary.

- (c) **(State's superior rights in accordance with Project Documents):** Paragraphs (a) and (b) do not:

- (i) prevent the State from exercising its rights at any time in accordance with the State Deed of Charge to the extent necessary to allow the State to exercise its rights and give effect to Project Co's obligations in accordance with:
 - A. clause 32 (Handover) of the Agreement;
 - B. clauses 43.1(a) and 43.1(d) (Step-in by the State) of the Agreement; and
 - C. clauses 43.1(b) and 43.1(c) (Step-In by the State) of the Agreement except that the State will not exercise its rights under clauses 43.1(b) and 43.1(c) (Step-In by the State) of the Agreement for so long as Project Co, the Security Trustee and any Enforcing Party are complying with their obligations under Clauses 4 and 5 of this document;
- (ii) affect the State's right to set off in accordance with clause 54.2 (Set-off) of the Agreement;
- (iii) prevent the State from enforcing the State Deed of Charge upon the appointment of an administrator to a Project Entity by any person in accordance with Part 5.3A of *the Corporations Act 2001* (Cth) before or during the decision period (as defined in Section 9 of the *Corporations Act 2001* (Cth)) provided that the Security Trustee is enforcing or subsequently enforces its Claim over all or substantially all of any Project Entity's property (except to the extent that the State is entitled to exercise its rights in accordance with paragraphs (c)(i)

or (c)(ii), and the State agrees that it will instruct its Enforcing Party to comply with paragraph (b)); or

(iv) limit the rights of the State in connection with any third party.

- (d) **(Security Trustee appointed Enforcing Party to co-operate):** Without limiting paragraph (c), if the State appoints an Enforcing Party in the circumstances referred to in paragraph (c)(i), then the Security Trustee must procure that any Enforcing Party appointed by the Security Trustee will promptly and fully cooperate with the Enforcing Party appointed by the State to the extent that the State reasonably requires and not do anything to prevent or hinder the Enforcing Party appointed by the State.
- (e) **(Status of State Deed of Charge):** Nothing in this Clause 3.6 affects a Project Entity's obligation to comply in all respects with the State Deed of Charge.

3.7 Receipts

If a party receives any payment in cash or in kind or recovers any amount (including by way of set off or combination of accounts) in relation to the Project (**Receipt**) which is:

- (a) not a payment required in accordance with any Project Document (provided that a payment required to be made following enforcement of any of the Securities is not considered to be a required payment for the purposes of this Clause 3.7); or
- (b) such a required payment but is not made in the manner and to the person prescribed in the relevant Project Document,

and a Security is enforced, then that party must immediately pay the amount of the Receipt to the other party for distribution in accordance with Clauses 3.2 and 3.4.

3.8 Registration and notice

The State and the Security Trustee must co-operate with a view to reflecting the priority of the Securities stated in this document in any register or with any filing or registration authority and in giving notice to insurers and debtors liable for obligations covered by a Security.

3.9 Priority for all moneys

Subject to Clause 3.6(c), the order and amount of priority established in accordance with this Clause 3 operates in connection with all amounts received or realised by way of set off by the State or the Security Trustee on a realisation of any of the Securities.

3.10 Marshalling of securities

Neither the State nor the Security Trustee is obliged to marshal in favour of the other. If any of the Securities becomes enforceable, each of the State and the Security Trustee in its absolute discretion may determine the extent (if any) to which it will have recourse to the Securities.

4. PA Default Events

4.1 Notice of PA Default Events

Without limiting the rights of the State under any State Project Document, the State will give the Security Trustee a copy of any notice given by the State to Project Co in connection with a PA Default Event at or about the same time as the notice is given to Project Co.

4.2 Information to Security Trustee

If the PA Default Event is capable of cure in accordance with the Agreement:

- (a) without limitation to any other obligations of a Project Entity under the Financing Documents, Project Co must keep the Security Trustee informed of all measures taken or intended to be taken by the Project Entity to remedy the PA Default Event; and
- (b) the State must, upon notice from the Security Trustee, provide to the Security Trustee copies of all material correspondence and documents issued by the State to Project Co in connection with the PA Default Event.

4.3 Security Trustee's right to remedy

- (a) The Security Trustee may (but is not obliged to), upon notice to the State, take steps to remedy or procure the remedy of a PA Default Event and to develop a remedy program in connection with the PA Default Event in accordance with this Clause 4.3 (**Financiers' Cure Program**).
- (b) The right to develop a Financiers' Cure Program is in addition to Project Co's right to remedy a PA Default Event in accordance with the Agreement (to the extent that the PA Default Event is capable of cure). The remedy of a PA Default Event effected by the Security Trustee or its Enforcing Party will (as between Project Co and the State) be effective as a remedy of the relevant PA Default Event by Project Co.
- (c) If the Security Trustee gives a notice to the State in accordance with paragraph (a), the State and the Security Trustee must meet as soon as reasonably practicable to agree:
 - (i) the steps to be undertaken by the Security Trustee or its Enforcing Party to remedy the PA Default Event; and
 - (ii) a date by which the PA Default Event must be remedied (which date must be consistent with the Security Trustee or an Enforcing Party diligently pursuing the Financiers' Cure Program).
- (d) If the Security Trustee and the State fail to agree on a Financiers' Cure Program, then any party may refer the matter for resolution in accordance with Clause 13. The program agreed or determined in accordance with Clause 4.3(c) or Clause 13 will be the Financiers' Cure Program.
- (e) If a PA Default Event occurs the State must, to the extent reasonably requested by the Security Trustee or its Enforcing Party:
 - (i) provide reasonable assistance to allow the Security Trustee and any such Enforcing Party all necessary access to the Site, subject to the Project Documents; and
 - (ii) promptly provide the Security Trustee and any such Enforcing Party with all material information in its possession relevant to the PA Default Event.
- (f) Without limiting any rights the Security Trustee can exercise in accordance with this Clause 4.3 or Clause 5.1, but subject to the acknowledgements in Clause 8.1, the Security Trustee agrees that neither it nor its Enforcing Party will in any way interfere with the performance of the D&C Subcontract or the FM Subcontract without obtaining the State's prior consent, unless such action is

permitted by the terms of the D&C Subcontract or the FM Subcontract (as applicable) or in accordance with the terms of the applicable Consent Deed.

4.4 Information

- (a) **(Obligations of Security Trustee):** From the date that the Security Trustee notifies the State in accordance with Clause 4.3(a), the Security Trustee must, when reasonably requested to do so, update the State of the actions taken by the Security Trustee or an Enforcing Party in implementing the Financiers' Cure Program and the progress of the remedy of the PA Default Event in accordance with the Financiers' Cure Program.
- (b) **(When extensions to be given):** If the Security Trustee or its Enforcing Party:
- (i) reasonably considers that the date specified for the remedy of a PA Default Event in accordance with the Financiers' Cure Program is no longer appropriate; and
 - (ii) is and has been diligently pursuing the remedy of the PA Default Event by complying with the Financiers' Cure Program,
- then, subject to paragraph (g), the date specified in the Financiers' Cure Program for the remedy of the PA Default Event will be extended by such period as the State determines is reasonably required to enable the Security Trustee or its Enforcing Party to remedy the PA Default Event.
- (c) **(Negotiation):** If the Security Trustee reasonably considers that the extension determined by the State in accordance with paragraph (b) is not sufficient:
- (i) the Security Trustee may notify the State that it does not agree with the extension and the senior representatives of the State and the Security Trustee or their nominees (**Representatives**) must meet and use reasonable endeavours to resolve the dispute within 10 Business Days of receipt by the State of the notice from the Security Trustee; and
 - (ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each party and be binding on the parties.
- (d) **(Dispute resolution):** If a dispute referred to in paragraph (c) remains unresolved after the expiration of the period for negotiation, the Security Trustee:
- (i) may (provided that the Security Trustee or an Enforcing Party has been diligently pursuing the Financiers' Cure Program) refer the matter for resolution in accordance with Clause 13; and
 - (ii) whilst the matter is being determined, must continue to diligently pursue or procure that an Enforcing Party continues to procure the Financiers' Cure Program,
- and, subject to paragraph (g), the State must not terminate the Agreement until such dispute is resolved.
- (e) **(Suspension of Financiers' Cure Program):** If the Security Trustee or its Enforcing Party takes any action in accordance with a Financiers' Security, on and from the date on which the State exercises its rights in accordance with clause 32 (Handover) or clause 43 (Step-in by the State) of the Agreement, the obligation on the Security Trustee or its Enforcing Party to comply with a Financiers' Cure Program will be suspended to the extent that the exercise by

the State of its step-in rights prevents the Financiers' Cure Program from being performed.

- (f) **(Diligent Pursuit):** For the purposes of this document, in assessing what can be achieved by diligent pursuit and in assessing whether there has been a failure to diligently pursue the Financiers' Cure Program, reasonable regard must be had to the time necessary to enforce the D&C Subcontract or the FM Subcontract or to engage a substitute Builder or FM Subcontractor or Builder Guarantor or FM Subcontractor Guarantor, if to do so would be consistent with the required steps and actions being diligently pursued, recognising that the Security Trustee is not a Builder, Operator or a FM Subcontractor (as applicable).
- (g) **(Maximum remedy period):** The maximum period of time which the Security Trustee or an Enforcing Party (or both) may be given to remedy a PA Default Event will be 24 months or such longer period as the State may otherwise agree (acting reasonably).
- (h) **(Extension in Particular Circumstances)** Notwithstanding paragraph (g), if an Enforcing Party has been unable to achieve an assignment, transfer or other disposal of the Charged Property:
 - (i) because the State has withheld consent to an assignment, transfer or other disposal of the Charged Property in breach of its obligation under clause 5.7(a); or
 - (ii) because of a Force Majeure Event, Compensable Extension Event or Intervening Event,

then the State will not refuse to grant a further extension to the Enforcing Party but only for a period which is necessary to overcome the delays caused by those events which prevented the assignment, transfer or other disposal from being achieved. The Security Trustee acknowledges that any extension resulting from a Force Majeure Event does not in any way limit the rights of the State in connection with the occurrence of the Force Majeure Event under the Project Documents.

4.5 Restrictions on termination

- (a) The State must not terminate the Agreement unless the State has given the Security Trustee a copy of the notice in connection with the PA Default Event in accordance with Clause 4.1 and:
- (b) the Security Trustee:
 - (i) has not responded to the notice within 15 Business Days of receipt; or
 - (ii) has notified the State that it does not intend to remedy the PA Default Event; or
- (c) the Security Trustee notifies the State of its intention to develop a Financiers' Cure Program within 15 Business Days of receipt of the State's notice in connection with the PA Default Event in accordance with Clause 4.1 and:
 - (i) the PA Default Event has not been remedied by the earlier of:
 - A. the date stated in the Financiers' Cure Program for the remedy of the PA Default Event (as may be varied from time to time in accordance with Clause 4.4); and

- B. the date which is 24 months from the date that the Security Trustee notifies the State that it intends to develop a Financiers' Cure Program in accordance with Clause 4.3(a) (or any longer period agreed under Clause 4.4(g) or Clause 4.4(h)); or
- (ii) the Security Trustee or an Enforcing Party is not diligently pursuing or has not diligently pursued the remedy of the PA Default Event (or the overcoming of its effects), including implementing the Financiers' Cure Program (if one has been agreed or determined),

provided however, that the State may not terminate the Agreement due to a failure to which paragraph (c)(ii) applies, unless it has given the Security Trustee notice of the failure and such failure has not been remedied within 20 Business Days of receipt of such notice by the Security Trustee.

4.6 No State liability

The State will not be liable to any Enforcing Party for any claims or liabilities incurred or sustained by that Enforcing Party in exercising any of its powers under or in accordance with Clause 4.3 or 4.4.

5. Enforcement by Security Trustee

5.1 Enforcement

Without limiting the actions which the Security Trustee may be entitled to take in connection with a PA Default Event (whether in accordance with the Financing Documents or otherwise), the Security Trustee and any Enforcing Party appointed in accordance with the Financiers' Securities may:

- (a) exercise Project Co's Rights;
- (b) engage another person to exercise Project Co's Rights; and
- (c) assign, novate, transfer or otherwise dispose of Project Co's Rights in whole or in part,

subject to the terms of the Financing Documents, this document and the rights and duties of the Security Trustee and an Enforcing Party in accordance with the Financiers' Securities and at Law.

5.2 No Liability

- (a) Subject to paragraph (b) and without limiting the Liability of each Project Entity (which continues to be responsible for the performance of its obligations in accordance with the Project Documents), the Finance Parties and any Enforcing Party will not be liable for any obligation or Liability of a Project Entity in accordance with the Project Documents by reason only of the Financiers' Securities or the exercise of any of their rights, powers or remedies in accordance with the Financiers' Securities.
- (b) All money paid by the Finance Parties or an Enforcing Party and all acts, matters or things done or effected by them which would satisfy the obligations of a Project Entity in accordance with the Project Documents will be effective, as between the State and the Project Entity, to fully satisfy and discharge the obligations of the Project Entity, in connection with which such payment has been made or act, matter or thing has been done.

5.3 Restriction on set off

- (a) Without limiting the operation of Clause 3, the Security Trustee agrees on its own behalf and must procure on behalf of each Finance Party that it and none of them will exercise:
 - (i) any right of set-off or combination of accounts in connection with the Project Accounts; or
 - (ii) any other right in connection with any of those accounts the effect of which would be to apply money standing to the credit of the account in a way inconsistent with clause 39 (Insurance) of the Agreement and Clause 7.
- (b) The rights set out in paragraphs (a)(i) and (a)(ii) may be exercised:
 - (i) if the Agreement has been terminated or the State has given a termination notice and is immediately entitled to terminate the Agreement in accordance with the Agreement or this document; or
 - (ii) to reduce Debt if an Enforcing Party has been appointed to a Project Entity.

5.4 Security Trustee not to hinder

Without limitation to its rights under this document, the Security Trustee must not knowingly exercise (and must procure that any Enforcing Party appointed in accordance with the Financiers' Securities will not knowingly exercise) any rights in a manner which interferes with, or restricts in any way, the proper and lawful exercise by the State of the State's rights in accordance with clauses 32 (Handover), 43 (Step-in by the State) or 54.2 (Set-off) of the Agreement, the State Deed of Charge, the Builder Side Deed, the FM Side Deed, this document or any other side document entered into by the State in connection with the Project.

5.5 Third party account bank

Each Project Entity must ensure that a Project Account is not held with a party (**Account Bank**) other than the Security Trustee or a Finance Party unless a Project Entity first procures that the Account Bank undertakes to the State to be bound by Clause 5.3 in accordance with the same terms as the Security Trustee.

5.6 Replacement of Builder or FM Subcontractor

- (a) If the Security Trustee or Project Co propose to remedy a PA Default Event or a Finance Default by appointing a new contractor to replace the Builder or the FM Subcontractor, or by novating the D&C Subcontract or the FM Subcontract (and other relevant Project Documents) to a replacement contractor, then the party seeking the appointment or novation must first obtain the State's prior consent which consent must not be unreasonably withheld or delayed if the State is satisfied that the matters stated paragraph (b) are satisfied.
- (b) The State will give its consent under paragraph (a) if the State (acting reasonably) is satisfied that:
 - (i) (**details**): Project Co or the Security Trustee has provided the State with details of the proposed replacement contractor and the terms and conditions on which the proposed replacement contractor is to be engaged;

- (ii) **(compliance with Agreement)**: if the same appointment were made by Project Co, that the appointment and the replacement contractor would enable Project Co to comply with the Agreement in all respects;
 - (iii) **(terms and conditions)**: except as otherwise agreed by the State, the proposed terms and conditions of the replacement contractor's engagement are not materially less onerous on the contractor than those that apply to the current contractor and include a requirement to perform such of the obligations of the current contractor in accordance with the relevant Project Documents which remain unsatisfied;
 - (iv) **(costs and expenses)**: a person other than the State bears all the State's reasonable costs and expenses (including legal costs and expenses) of and incidental to:
 - A. any enquiries which the State may make for the purposes of determining whether to consent to the replacement contractor;
 - B. the procurement of a replacement contractor; and
 - C. the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in connection with such documentation.
- (c) To the extent that the appointment of a replacement contractor in accordance with this Clause 5 involves the novation of a Project Document:
- (i) each of the State and the Security Trustee will release those Securities as it is necessary to release to facilitate the novation; and
 - (ii) each party to this document and each other party to the Project Documents consents to that novation,
- but without prejudice to any accrued rights and Claims against the replaced contractor at the time of novation.
- (d) To the extent that the release of the Securities is necessary in accordance with paragraph (c), each party will use its reasonable endeavours to ensure that the Project Documents (as novated) become subject to a Security Interest in favour of the party who granted the release, on terms substantially similar to those of the released security.

5.7 Disposal of a Project Entity's interest

- (a) If an Enforcing Party proposes to remedy a PA Default Event or a Finance Default by assigning, novating, transferring or otherwise disposing of a Project Entity's interest in, or obligations under the Project Documents in accordance with the Enforcing Party's rights or the Financiers' rights under the Financing Documents, the Security Trustee must first obtain the State's prior consent, which consent must not be unreasonably withheld or delayed if the State is satisfied the matters set out in paragraph (b) are satisfied.
- (b) The State must give its consent if:
 - (i) **(details)**: the State has been provided with details of the proposed purchaser and the terms and conditions of the proposed disposal;
 - (ii) **(permitted disposal)**:

- A. in relation to the disposal of an Equity Interest:
- 1) the proposed assignment, transfer or disposal is permitted in accordance with clause 46.6 (Change in Control) of the Agreement;
 - 2) the State is not permitted to withhold consent to that assignment, transfer or disposal under clause 46.6(c) (Change in Control) of the Agreement; or
 - 3) the State is reasonably satisfied that the Equity Interest is being assigned, transferred or disposed of to a person who:
 - a) is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person); and
 - b) has the necessary financial capacity and contractual and financing arrangements with third parties to perform, or procure that the Project Entity performs, the Project Entity's obligations under the State Project Documents; and

B. in relation to the disposal by the Security Trustee or an Enforcing Party of any property to a person (other than the Security Trustee or its Enforcing Party), the State is reasonably satisfied that the property is being assigned, transferred or disposed of to a person who:

- 1) is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person);
- 2) has assumed all of the Project Entity's obligations under the State Project Documents; and
- 3) has the necessary financial and technical capacity, access to Project assets and contractual and financing arrangements with third parties to perform the Project Entity's obligations under the State Project Documents;

- (iii) **(no adverse effect)**: the proposed disposal would not result in there being any adverse effect on the rights of, or increase in the liabilities or obligations of, the State in accordance with the State Project Documents than if the Charged Property or the Equity Interests (as relevant) were not disposed of;
- (iv) **(terms and conditions)**: the proposed purchaser has agreed to be bound by the terms of the relevant Project Documents; and
- (v) **(costs and expenses)**: a person other than the State bears all the State's reasonable costs and expenses (including legal costs and expenses) of and incidental to:

- A. any enquiries which the State may make for the purposes of determining whether to consent to the disposal;
- B. the procurement of a purchaser; and
- C. the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in relation to such documentation.

5.8 Appointment of Enforcing Party

- (a) Without limiting any other rights of the Security Trustee:
 - (i) if the Security Trustee appoints an Enforcing Party in accordance with the Financiers' Securities, for the avoidance of doubt:
 - A. that appointment will not constitute a PA Default Event; and
 - B. in connection with the appointment of an Enforcing Party to a Project Entity, a PA Default Event will not be taken to subsist under paragraphs (c) (finance default) or (g) (Change in Control) of the definition of Event of Default or under paragraph (b) (receiver) of the definition of Immediate Termination Event, but if and only for so long as the Enforcing Party has access to adequate financial resources to enable the Project Entity to fully comply with all of its obligations under the Project Documents as and when they arise; and
 - (ii) for the avoidance of doubt, any:
 - A. enforcement action taken by the Security Trustee or an Enforcing Party (appointed in accordance with the Financiers' Securities) in accordance with Clause 5.1;
 - B. replacement of a Builder or FM Subcontractor under Clause 5.6; or
 - C. disposal of a Project Entity's interest in the Project Documents in accordance with Clause 5.7,

will not, by itself, provide the State with the right to terminate any State Project Document.
- (b) Subject to Clause 5.8(c), the Security Trustee must not appoint an Enforcing Party in accordance with the Financiers' Securities unless the:
 - (i) proposed Enforcing Party is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person); and
 - (ii) appointment is otherwise in accordance with this document.
- (c) In circumstances where the Security Trustee must, as a result of the circumstances that exist at the relevant time, appoint an Enforcing Party without delay, the process in Clause 5.8(b) will not apply and instead the Security Trustee may appoint an Enforcing Party in accordance with the Financiers' Securities by providing notice of that appointment to the State and ensuring that the appointment is otherwise in accordance with this document. The notice provided to the State must also contain the Security Trustee's undertaking to submit to the following process:

- (i) within 10 Business Days of giving the notice referred to in Clause 5.8(c), the Security Trustee must demonstrate that the Enforcing Party meets the criteria set out in Clause 5.8(b); and
 - (ii) in circumstances where the Enforcing Party is not a Fit and Proper Person (or a person who Controls that person is not a Fit and Proper Person) within a further 5 Business Days must remove the appointed Enforcing Party and appoint a replacement Enforcing Party that does meet the criteria set out in Clause 5.8(b).
- (d) The Security Trustee will not, and will ensure that an Enforcing Party does not, exercise or purport to exercise a Project Entity's Rights without first notifying the State.
- (e) The Security Trustee must minimise, and must ensure that its Enforcing Party will minimise, any disruption that may result from it exercising a Project Entity's Rights.

5.9 Documentation

If the State consents to the replacement of the Builder or the FM Subcontractor, or the disposal of a Project Entity's interest in the Project Documents, in accordance with Clause 5.6 or 5.7 respectively, the State, Security Trustee and the replacement contractor or purchaser (as applicable) will execute such documents as are reasonably necessary to give effect to the replacement, novation, assignment, transfer or disposal.

6. Finance Default

6.1 Notice of Finance Default

Promptly after the Security Trustee gives notice of a Finance Default to a Project Entity, the Security Trustee must provide notice to the State of the Finance Default which includes:

- (a) reasonable details of the Finance Default; and
- (b) whether the Security Trustee intends to exercise its enforcement rights in accordance with the Financing Documents, and if so, the proposed date for, and proposed method of, such exercise.

6.2 Notice of enforcement

The Security Trustee must not:

- (a) declare any moneys secured in accordance with the Financing Documents due and payable;
- (b) take any action to enforce the Financiers' Securities; or
- (c) recover any moneys secured in accordance with the Financiers' Securities,

unless, in the case of the appointment of an Enforcing Party, the Security Trustee has first provided to the State:

- (d) not less than 24 hours prior notice if the Security Trustee is of the reasonable opinion that any delay in the appointment of an Enforcing Party would materially and adversely affect the Financiers; or
- (e) not less than 10 Business Days prior notice in all other cases.

6.3 Information to the State

Upon the occurrence of a Finance Default:

- (a) the Security Trustee must provide to the State copies of all correspondence and documents issued by the Security Trustee to a Consortium Entity in connection with the Finance Default;
- (b) if the Finance Default is capable of remedy, each Project Entity must keep the State informed of all measures taken or intended to be taken to remedy the Finance Default; and
- (c) whether or not the Finance Default is capable of remedy, each Project Entity or the Security Trustee must keep the State informed of all measures taken or intended to be taken by in connection with the Finance Default (including details of any action taken by the Security Trustee to enforce the Financiers' Securities).

6.4 Payments by State

The parties acknowledge that the State is not liable for costs incurred by a party to this document in attempting to remedy a Finance Default or in exercising any rights in accordance with the Financing Documents.

7. Insurance proceeds

- (a) All insurance proceeds received by the Security Trustee or any Enforcing Party appointed by the Security Trustee, which (were they to have been received by a Project Entity) would have been required to have been deposited into the Insurance Proceeds Account, must be deposited into the Insurance Proceeds Account.
- (b) The insurance proceeds deposited into the Insurance Proceeds Account must be applied in accordance with clause 39.10 (Insurance Proceeds Account) of the Agreement.
- (c) Project Co is permitted, and the Security Trustee, in its capacity as Security Trustee, will use reasonable endeavours to assist Project Co to take any action contemplated by clause 39.10 (Insurance Proceeds Account) of the Agreement.
- (d) Project Co and the Security Trustee must not make any payments from the Insurance Proceeds Account except as permitted in accordance with this document.

[Note: Assure's request for discussion. There is no reference to \$ amounts in this clause.]

8. Recognition of rights

8.1 Recognition of State's rights

- (a) Without limitation to Clause 4.5, the Security Trustee acknowledges the rights of the State in accordance with:
 - (i) the Agreement; and
 - (ii) the Builder Side Deed and the FM Side Deed,

including to require an assignment of the D&C Subcontract or the FM Subcontract if it becomes entitled to terminate the Agreement.

- (b) Without limitation to Clause 4.5, the Security Trustee will use reasonable endeavours to ensure that its rights in accordance with the Financing Documents are exercised in a way which facilitates the effective exercise by the State of the rights referred to in paragraph (a). If and to the extent that the exercise of any such rights involves the assignment of the D&C Subcontract or the FM Subcontract by Project Co, the Security Trustee will release the D&C Subcontract or the FM Subcontract (as applicable) from the Financiers' Securities to facilitate the assignment. Nothing in this Clause 8.1, the Builder Side Deed or the FM Side Deed requires the Security Trustee to release or forgo any rights or Claims against a Project Entity.
- (c) The State must not exercise its rights in accordance with clause 5 (Right to remedy before termination of D&C Subcontract) or clause 6 (Step-in by the State) of the Builder Side Deed, or clause 4 (Right to remedy before termination of FM Subcontract) or clause 5 (Step-in by the State) of the FM Side Deed unless and to the extent only:
 - (i) without limitation to clause 4.5, a circumstance which entitles the State to appoint an Enforcing Party in accordance with the State Deed of Charge subsists;
 - (ii) subject to clause 3.6(c)(i)C, the State is entitled to exercise its rights in accordance with clause 43 (Step-in by State) of the Agreement; or
 - (iii) without limitation to clause 4.5, in the case of clause 5.1 (The State's right to remedy) of the Builder Side Deed and clause 4.1 (The State's right to remedy) of the FM Side Deed, a State Cure Notice has been given under clause 5.2 (Builder's right to terminate) of the Builder Side Deed and/or clause 4.2 (FM Subcontractor's right to terminate) of the FM Side Deed respectively and if the "Default Event" referred to in the relevant State Cure Notice is also a PA Default Event, that Project Co, the Security Trustee or any Enforcing Party are not complying with their obligations under Clauses 4 and 5 of this document.

8.2 Release of Security

- (a) Subject to the terms of this document, to the extent that a Project Entity is required to handover, surrender, transfer, pay or otherwise dispose of property (including rights to insurance proceeds) to the State or its nominee in accordance with the State Project Documents and that property is in whole or part the subject of any Security Interest in favour of the Security Trustee or any Finance Party (including any Security Interest in accordance with the Financiers' Securities), the Security Trustee will promptly ensure that the Security Interest is released in connection with that property and will do all things including registering documents as the State may reasonably require as may be necessary or desirable to give effect to that release, but without prejudice to any accrued rights and Claims the Security Trustee may have against that Project Entity or continuing Security Interests not required by this Clause to be released.
- (b) Nothing in paragraph (a) requires the Security Trustee to release a Security Interest over the right of Project Co to be paid an amount in accordance with clause 44.5 (Payments on termination) of the Agreement.

8.3 Recognition of Security Trustee rights

- (a) The State acknowledges the rights of the Security Trustee under each Consent Deed (**Security Trustee Tripartite Rights**).
- (b) The State and the Security Trustee agree that if the Security Trustee exercises its rights to step in under any applicable Consent Deed, the Security Trustee Tripartite Rights will take precedence over the rights of the State under the Builder Side Deed or FM Side Deed (as the case may be) and the State must not exercise its rights under the Builder Side Deed or FM Side Deed (as the case may be) in such a manner as to prevent or hinder the Security Trustee in its exercise of the Security Trustee Tripartite Rights but subject to the rights of the State under Clause 3.6(c). For the avoidance of doubt nothing in this Clause otherwise limits the State in performing or procuring the normal functioning of the Facility.
- (c) The Security Trustee must keep the State informed of all measures taken and intended to be taken by it (or on its behalf) in exercising the Security Trustee Tripartite Rights.

9. Undertakings

9.1 Amendments to Financing Documents

- (a) **(No amendments without consent)**: Subject to paragraphs (b) and (c), the Security Trustee must not agree to or permit any variation, amendment, waiver or replacement (**Amendment**) of any Financing Document without the State's prior consent which consent must not be unreasonably withheld.
- (b) **(Amendment not effective)**: Each Project Entity and the Security Trustee agree as between themselves and for the benefit of the State, that no Amendment to a Financing Document will be effective as between the parties to that Financing Document unless that Amendment has been made in compliance with this Clause 9.1 (and that any agreement at any time between any of them which purports to limit the operation of paragraph (a) including any provision that a Financing Document prevail over this document, will be ineffective).
- (c) **(Permitted Amendment)**: The prior consent of the State is not required for an Amendment that:
 - (i) **(replacement of Financier)**: is a novation, assignment or substitution of a Financier or any of the rights or obligations of a Financier if:
 - A. the novatee, assignee or substitute is a Financier or has a long term foreign currency rating of at least BBB+ by Standard and Poor's (Australia) Pty Limited or Baa1 by Moody's Investor Services, Inc.; or
 - B. the Financier has fully funded its commitment in accordance with the Financing Documents;
 - (ii) **(consent)**: occurs under and as permitted by clause 37 (Refinancings) of the Agreement;
 - (iii) **(approved Modifications)**: solely gives effect to Project Co's obligation to proceed with a Modification in accordance with clause 34 (Modifications) of the Agreement;
 - (iv) **(Finance Default)**: is:

- A. a waiver by the Security Trustee of; or
 - B. required to avoid,

a breach of a Financing Document or a Finance Default in accordance with a Financing Document; or
 - C. the exercise of an express unilateral right of a Financier to make an amendment in accordance with a Financing Document;
- (v) **(novation or assignment)**: is a novation or assignment in accordance with Clause 10.1;
 - (vi) **(derivative transaction)**: is an entry into any derivative transaction permitted by and in accordance with the Financing Documents; or
 - (vii) **(Amendment)**: the State's consent has been obtained under the Agreement,

(each a **Permitted Amendment**).
- (d) **(Notice of Permitted Amendment)**: Project Co and the Security Trustee must:
 - (i) give notice to the State of any Permitted Amendment within 10 Business Days after that Permitted Amendment takes effect, including details of the reasons for the Permitted Amendment and copies of any documents relevant to the Permitted Amendment; and
 - (ii) provide any further information reasonably requested by the State regarding the Permitted Amendment within 10 Business Days of receipt of a request from the State.
- (e) **(Notice of intended Amendment (other than a Permitted Amendment))**: Any notice given in accordance with seeking the State's Consent under paragraph (a) must include:
 - (i) full details of:
 - A. the terms of the Amendment and the reasons for the Amendment;
 - B. the responses or anticipated response of any other party to the relevant documents regarding the Amendment;
 - C. the response or anticipated response of any assignee of, or person holding a Security Interest in, the documents relevant to the Amendment; and
 - D. the impact or potential impact of the Amendment on:
 - 1) delivery of the Project by Project Co;
 - 2) performance of a Project Entity's obligations in accordance with the Project Documents;
 - 3) the financial structure or business of a Project Entity;
 - 4) the State's interests in the Project Documents;

- 5) the manner (if any) in which the Amendment may have any of the effects referred to in paragraph (c); and
 - 6) Equity Return or Distributions; and
 - (ii) copies of all contractual and security documentation relevant to the Amendment.
- (f) **(Consent)**: The State must give notice to Project Co and the Security Trustee within 10 Business Days (or such longer period as the State reasonably requests given the nature of the Amendment) of receiving the notice in accordance with paragraph (a) and which, where applicable, complies with paragraph (e), that:
 - (i) it consents to the Amendment;
 - (ii) the Amendment is unacceptable to it and the reasons why the Amendment is unacceptable; or
 - (iii) it requires further information regarding the Amendment. If so, the other parties must provide the additional information sought by the State within a further period of 10 Business Days after which the State must respond in terms of paragraphs (f)(i) and (f)(ii) within 10 Business Days of receipt of the additional information.
- (g) **(Clarification)**: Subject to paragraph (a), nothing in this clause 9.1 or Clause 54.15 (Amendments to Project Documents) of the Agreement prevents or restricts any person exercising any rights they have in accordance with the Financing Documents.
- (h) **(Consequences of amending without consent)**: If any Financing Document as originally executed and delivered by the parties thereto is varied or replaced without the State's prior consent (but only to the extent that State consent is required), then the State will only be liable in accordance with the Project Documents to the extent it would have been had there been no such variation or replacement to the Financing Document.

9.2 Amendments to Project Documents

- (a) While any Debt is outstanding, the State undertakes for the benefit of the Security Trustee that it will not make any material modification, variation or amendment to the terms of any State Project Document without the prior consent of the Security Trustee, which consent must not be unreasonably withheld or delayed.
- (b) The State is not required to obtain the consent of the Security Trustee in accordance with paragraph (a) in connection with any material modification, variation or amendment determined (including by an expert, arbitrator or judge) in accordance with clause 45 (Dispute Resolution) of the Agreement or the equivalent dispute resolution provisions of another State Project Document.

10. Assignment

10.1 No assignment without consent

Subject to Clause 10.2, no party may assign, novate or otherwise transfer any of its rights or obligations in accordance with this document without the prior written consent of each other party, which consent must not be unreasonably withheld or delayed. No party is

entitled to withhold its consent to an assignment or transfer of this document by the Security Trustee if:

- (a) it is related to all its right, title and interest in this document and in the Financing Documents (in its capacity as Security Trustee);
- (b) it occurs consequent upon the implementation of provisions in a Financing Document providing for the replacement of the Security Trustee;
- (c) it relates to a replacement Security Trustee which is a solvent and reputable financial institution or trustee corporation; and
- (d) the replacement Security Trustee has executed an accession document in a form reasonably acceptable to the State in which it agrees to be bound by the provisions of this document.

10.2 Assignment by the State

Nothing will prevent the assignment, novation or transfer by the State to an assignee, novatee or transferee of the State's rights and obligations in accordance with the Agreement made in accordance with clause 46.4 (Assignment by the State) of the Agreement, provided the proposed assignee, novatee or transferee agrees to execute a document in favour of the Security Trustee (in such form as the Security Trustee reasonably requires) in accordance with which the assignee, novatee or transferee agrees to be bound by this document as if it were the State.

11. Confidentiality

11.1 Confidential Information

- (a) (**Confidentiality obligations**): Subject to paragraphs (b) and (c), each Project Entity and the Security Trustee must keep confidential the State Project Documents, all Records and all Disclosed Information (**Confidential Information**). The Security Trustee must procure that each other Finance Party complies with the obligations contained within this Clause 11.
- (b) (**Permitted disclosure**): Each Project Entity and the Security Trustee are not obliged to keep confidential any information:
 - (i) which is in the public domain through no default of any party; or
 - (ii) the disclosure of which is:
 - A. required by Law, including in accordance with the *Freedom of Information Act 1992 (WA)*;
 - B. required by a relevant stock exchange;
 - C. consented to by the State (if applicable);
 - D. made to a court in the course of proceedings to which the disclosing person is a party;
 - E. in connection with an assignment, novation or participation that is permitted in accordance with the Agreement or this document; or
 - F. to any professional or other adviser consulted by it in relation to any of its rights or obligations under the Project Documents.

- (c) **(Disclosure to Project Co's Associates):** Without limiting each Project Entity's or the Security Trustee's obligations in accordance with paragraph (a), each Project Entity and the Security Trustee may disclose confidential information to:
- (i) Project Co's Associates to the extent necessary for the purpose of undertaking the Project; or
 - (ii) subject to paragraph (d), any prospective financier or equity investor of the Project.
- (d) **(No disclosure):** Each Project Entity and the Finance Parties must not disclose any Confidential Information to any prospective financier or equity investor of the Project until, if required by the State, the State has carried out any Probity Investigations in connection with the relevant entities.
- (e) **(State may disclose):** The State may at any time disclose the Confidential Information and any other information in connection with the Project:
- (i) to any State department or Minister;
 - (ii) to any State Associate to the extent necessary for the purpose of the Project;
 - (iii) in accordance with all Laws;
 - (iv) in the course of official duties by the Minister for Works and Minister for Corrective Services of Western Australia, the Premier of Western Australia, the Treasurer of Western Australia, the Department of Works of Western Australia, DCS or the Department of Treasury of Western Australia;
 - (v) to satisfy the requirements of parliamentary accountability;
 - (vi) to the Western Australian Auditor-General for the purposes of satisfying its statutory duties;
 - (vii) in accordance with policies of the Western Australian government;
 - (viii) in annual reports of Western Australia Department of Works, DCS and the Department of Treasury; and
 - (ix) in accordance with the *Freedom of Information Act 1992 (WA)* or the *Parliamentary Commissioners Act 1971 (WA)*.
- (f) **(Government websites):** The contents of the State Project Documents and any other document in connection with the Project which is authored or authorised by the State or a Governmental Agency may be published on any Western Australian government internet website other than:
- (i) the Financial Model; or
 - (ii) the terms of any Project Documents designated as confidential by the parties in Schedule 16 of the Agreement (Confidential Provisions),
- without the prior consent of Project Co except:
- (iii) to any State department or Minister provided that such Confidential Information is not further disclosed other than in accordance with this paragraph 11.1(f);

- (iv) to any State Associate but only to the extent necessary for the purpose of the Project and provided that such information is not further disclosed other than in accordance with this paragraph 11.1(f);
- (v) to satisfy the requirements of parliamentary accountability and parliamentary disclosure obligations;
- (vi) where required by the Director General, Chief Executive Officer or the Commissioner of the Department of Corrective Services where required to do so to exercise the duties of his office provided that such information is not further disclosed other than in accordance with this paragraph (f);
- (vii) in accordance with all Laws and its obligations under Laws; or
- (viii) to the extent reasonably necessary for the purposes of a value for money analysis of the Project.

11.2 Public announcements

Each Project Entity and the Security Trustee must not make any public disclosures, announcements or statements in connection with the Project without the State's prior consent (which will not be unreasonably withheld or delayed).

12. Termination

- (a) This document will terminate if:
 - (i) the parties agree in writing; or
 - (ii) the Agreement terminates and all amounts owing under the Agreement and this document by any party to another party have been paid in full.
- (b) The termination of this document does not affect the rights of any party which have accrued to that party before the date of termination or as a consequence of the termination of the Agreement.

13. Dispute Resolution

- (a) If a matter is referred for determination in accordance with this Clause 13:
 - (i) any dispute or difference of opinion arising between the parties in connection with that matter must be resolved in the same manner that disputes or differences of opinion referred for expert determination in accordance with the Agreement are resolved; and
 - (ii) accordingly, the provisions of clause 45 (Dispute Resolution) of the Agreement are incorporated into this document but as if:
 - A. the only persons party to the Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
 - B. the only matters for expert determination in accordance with those provisions are the matters referred for expert determination in accordance this document.

- (b) Each party may refer a dispute, despite any other provision, in accordance with this document to dispute resolution in accordance with this Clause 13.

14. GST

14.1 GST

- (a) **(Construction):** In this Clause 14:
- (i) words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law;
 - (ii) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
 - (iii) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.
- (b) **(Nominated entity):** The State confirms that the entity nominated to be responsible for the administration of the State's GST reporting obligations **(Nominated Entity)** is registered for GST as at the date of this document. The parties acknowledge that the Nominated Entity will be responsible for administering the obligations in accordance with this Clause on behalf of the State.
- (c) **(Additional amount):** Unless otherwise expressly stated, and except in connection with a supply to which paragraph (d) applies, all prices or other sums payable or consideration to be provided in accordance with this document are exclusive of GST.
- (d) **(Non-monetary consideration):** Subject to paragraph (i), if some or all of the consideration for a taxable supply made by a party in connection with this document is not expressed as an amount of money **(Non Monetary Consideration)** and also constitutes a taxable supply by the recipient, the parties agree that:
- (i) the Non Monetary Consideration is GST inclusive and will not be increased on account of GST under paragraph (e); and
 - (ii) Project Co will, after consultation with and the approval of the State (such approval not to be unreasonably withheld or delayed), instruct a suitably qualified professional valuer to determine, in accordance with the principles set out by the Commissioner of Taxation in GST Ruling GSTR 2001/6 or any replacement ruling, the GST inclusive market value of any Non Monetary Consideration provided by the supplier and the recipient; and
 - (iii) Project Co will notify the State of the amount determined by the valuer within 15 days of the end of the Month in which this document is entered.
- (e) **(Payment of GST):**
- (i) Subject to paragraph (d)(i) if GST is payable on any supply made by a party **(Supplier)** under or in connection with this document, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.

- (ii) The recipient will pay the amount referred to in paragraph (i) in addition to and at the same time that the consideration for the supply is to be provided in accordance with this document.
- (f) **(Gross-up of non-monetary consideration supplies):** If, at any time a supplier has a GST liability for a tax period in connection with a taxable supply to which paragraph (d) applies (**Non Monetary Consideration Supplies**) that exceeds the input tax credit to which the supplier is entitled in respect of its acquisition of the recipient's taxable supplies (Acquisition) for that tax period:
 - (i) the consideration for the Non Monetary Consideration Supplies is not GST inclusive and that consideration must be increased on account of GST under paragraph (e);
 - (ii) the recipient of the Non Monetary Consideration Supply must pay to the supplier the amount by which that consideration must be increased on account of GST under paragraph (e) less the input tax credit (if any) to which the supplier is entitled in respect of the Acquisitions within 5 Business Days of being requested in writing by the supplier to do so; and
 - (iii) the parties will do all things required, including issuing new tax invoices and adjustments notes (if necessary) to give effect to this paragraph (f).
- (g) **(Tax invoices):**
 - (i) The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under paragraph (e) or (f).
 - (ii) The recipient can withhold payment of any amount payable in accordance with this Clause 14 until the Supplier provides a tax invoice or an adjustment note, as appropriate.
- (h) **(Adjustment event):** If an adjustment event arises in connection with a taxable supply made by a Supplier in accordance with this document, the amount payable by the recipient in accordance with this Clause 14 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.
- (i) **(Reimbursements):** Where a party is required in accordance with this document to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
 - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.

15. Notices

15.1 Notices

- (a) **(Form of notices):** Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with this document (in this Clause 15.1, "**Notices**"):

- (i) must be in writing; and
 - (ii) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary, Partner Representative or authorised agent of, that party.
- (b) (Procedure for sending notices): All Notices must be:
- (i) delivered or posted by prepaid post to the address; or
 - (ii) sent by email in the form of a .pdf file letter (or such other form agreed by the State) to the email address,

of the addressee set out below (or as otherwise notified by that party to each other party from time to time).

[not disclosed]

- (c) (**Date of receipt**): Subject to paragraph (d), a Notice is taken to be received by the addressee:
- (i) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (ii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient; and
 - (iii) in the case of delivery by hand, on delivery.
- (d) (**Next Business Day**): If the communication is taken to be received on a day which is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.
- (e) (**Notices sent by email**): In connection with Notices sent by email:
- (i) only the letter in .pdf format attached to the email and any attachments to such letter which are referred to in the letter, will form part of the communication in accordance with this Clause 15.1. Any text in the body of the email or the subject line will not form part of the Notice; and
 - (ii) each Project Entity must ensure that, in connection with any communications in accordance with or in connection with this document:
 - A. its firewall and/or mail server (as applicable):
 - 1) allows messages of up to 14 MB to be received;
 - 2) does not trap any messages in the spam filter which have been sent from any State domain; and
 - 3) automatically sends a receipt notification to the sender upon receipt of a message; and

- B. its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

16. General

16.1 Interest

- (a) If a party fails to pay any amount payable by that party to the other party within the time required in accordance with this document, then it must pay interest on that amount in accordance with paragraph (b).
- (b) Interest is:
 - (i) payable from the due date until payment is made before and, as an additional and independent obligation, after any judgment or other thing into which the Liability to pay the money payable becomes merged;
 - (ii) calculated on daily balances at the Default Rate; and
 - (iii) capitalised Monthly.
- (c) The amount calculated in accordance with paragraph (b) will be a party's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

16.2 Relationship of the parties

- (a) No duty of good faith is implied on the State in connection with its relationship with any of the parties.
- (b) Neither the Project Documents nor the relationship created by them, are intended to create, and will not be construed as creating, any partnership or joint venture as between the parties.
- (c) The Finance Parties may not act as or represent itself to be the servant or agent of the State.

16.3 State's rights, duties, powers and functions

- (a) **(State's own interests):** Unless this document expressly provides otherwise, nothing in this document gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or performing any of its obligations in accordance with the Project Documents to which the State is a party.
- (b) **(State's powers, functions or duties):** Notwithstanding anything contained or implied in this document to the contrary, the parties expressly agree that the State is not obliged to exercise a power, function or duty which is granted to or within the responsibility of any other Governmental Agency, or to influence, over-ride or direct any Governmental Agency in the proper exercise and performance of its legal duties and functions.
- (c) **(No fettering):** Nothing contained in this document or contemplated by this document has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its statutory rights, duties, powers or functions.

- (d) **(No Claim):** Subject to paragraph (e), each Project Entity and the Finance Parties must not make any Claim against the State for any Liability in connection with any exercise or failure of the State to exercise its statutory rights or duties.
- (e) **(Liability for breach):** Paragraphs (a) to (d) do not limit any Liability of the State which the State would have had to any party in accordance with any Project Document to which the State is a party as a result of a breach by the State of a term of any Project Document to which the State is a party but for paragraphs (a) to (d).

16.4 Reasonable endeavours

If there is any statement in this document that the State will use "reasonable endeavours" in connection with an outcome it means that:

- (a) the State will take steps to bring about the relevant outcome so far as it is reasonably able to do so having regard to its resources and other responsibilities;
- (b) the State cannot guarantee the relevant outcome; and
- (c) the State, by undertaking to exercise reasonable endeavours, is not required to:
 - (i) interfere with or influence the exercise of any statutory power or discretion by anybody, including a Governmental Agency; or
 - (ii) act in any other way that the State regards as not in the public interest.

16.5 Entire agreement

The State Project Documents constitute the entire agreement and understanding between the parties and supersede any prior agreement (whether in writing or not), negotiations, discussions, understandings and agreements between the parties in connection with the subject matter of this document.

16.6 Counterparts

This document may be executed in any number of counterparts and all of such counterparts taken together will be deemed to constitute one and the same instrument.

16.7 Governing law

This document is governed by and will be construed according to the Laws of Western Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State and the courts competent to determine appeals from those courts.

16.8 No waivers

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or this document by the State will not in any way preclude, or operate as a waiver of, any exercise or enforcement of that or any other right, power or remedy provided by Law or this document.
- (b) No waiver by the State of a breach of any term of this document will operate as a waiver of another breach of that term or of a breach of any other term of this document.

16.9 Variations and waivers

No variation, modification or waiver of any provision in this document, nor consent to any departure by any party from any such provision, will be of any effect unless it is in writing, and signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

16.10 Amendments

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

16.11 Joint and several Liability

If a Project Entity consists of more than one person, then the rights and obligations of that Project Entity in accordance with this document are joint and several as between those persons.

16.12 Indemnities

- (a) Any indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination or expiration of this document.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this document.
- (c) A party must pay on demand any amount it must pay in accordance with an indemnity in this document.
- (d) The State and each Project Entity agree that:
 - (i) each indemnity or promise referred to in this document in favour of Indemnified Persons is held on trust by the State for the benefit of any of the Indemnified Persons; and
 - (ii) the consent of the Indemnified Persons referred to in paragraph (i) will not be required for any amendment to, or waiver of rights in accordance with a State Project Document.

16.13 Clauses to survive termination

- (a) All provisions of this document which expressly or by implication from their nature are intended to survive termination, completion or expiration of this document will survive such termination, completion or expiration, including any provision which is in connection with:
 - (i) the State's to set-off and to recover money;
 - (ii) confidentiality or privacy;
 - (iii) any obligation to make any Records available to the State;
 - (iv) any indemnity given in accordance with this document; or
 - (v) any right or obligation arising on termination of this document.
- (b) Nothing in this Clause 16.13 prevents any other provision of this document, as a matter of interpretation, also surviving the termination of this document.

- (c) No right or obligation of any party will merge on completion of any transaction in accordance with this document. All rights and obligations in accordance with this document survive the execution and delivery of any transfer or other agreement which implements any transaction in accordance with this document.

16.14 Costs and expenses

Except as otherwise provided in this document each party must:

- (a) pay its own costs and expenses in connection with negotiating, preparing, executing and performing this document; and
- (b) perform its obligations in accordance with this document at its own cost.

16.15 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents ((in form and content reasonably satisfactory to each party) required by Law or reasonably requested by another party to give effect to this document.

16.16 Severability of provisions

Any provision of this document that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this document nor affect the validity or enforceability of that provision in any other jurisdiction.

Executed as a deed.

Executed for and on behalf of the Minister For Works by Troy Raymond Buswell MLA, Treasurer of Western Australia pursuant to a delegation from the Minister for Works to the Treasurer dated 1 July 2011 made pursuant to section 5A(f) of the Public Works Act 1902 in the presence of:

Signature of **Troy Raymond Buswell
MLA, Treasurer of Western Australia**

Signature of witness

Name of witness

Executed for and on behalf of the State of Western Australia by the Honourable Murray John Cowper MLA, Minister for Training and Workforce Development; Corrective Services in the presence of:

Signature of **Honourable Murray John
Cowper MLA, Minister for Training and
Workforce Development; Corrective
Services**

Signature of witness

Name of witness

Executed by Assure Partners (EGRP) 1 Pty Ltd (ACN 160 900 149) as trustee of the Assure Partners (EGRP) Unit Trust 1 for and on behalf of the Assure Partners (EGRP) Partnership by its attorney under Power of Attorney dated 7 December 2012 in the presence of:

Signature of Witness

Print full name of Witness

Signature of Attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Print name of Attorney

Executed by Assure Partners (EGRP) 2 Pty Ltd (ACN 161 471 316) as trustee of the Assure Partners (EGRP) Unit Trust 2 for and on behalf of the Assure Partners (EGRP) Partnership by its attorney under Power of Attorney dated 7 December 2012 in the presence of:

Signature of Witness

Print full name of Witness

Signature of Attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Print name of Attorney

Signature of Witness

Print full name of Witness

Signature of Attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Print name of Attorney

Executed by Stella EGRP Finance Pty Limited (ACN 153 050 198) by its attorney under Power of Attorney dated 7 December 2012 in the presence of:

Signature of Witness

Print full name of Witness

Executed by CBA Corporate Services (NSW) Pty Limited (ACN 072 765 434) by its attorney under Power of Attorney dated 14 November 2008 in the presence of:

Signature of Witness

Print full name of Witness

Signature of Attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Print name of Attorney

Signature of Attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Print name of Attorney