



HERBERT  
SMITH  
FREEHILLS

# Agreement

Execution version

Eastern Goldfields Regional Prison Redevelopment  
Project

## State Loan Agreement

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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

Stella EGRP Finance Pty Limited



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## State Loan Agreement

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Date ►

Between the parties

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**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** of Level 8, 5 Mill Street, Perth, WA 6000

**(State)**

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**Stella EGRP Finance Pty Limited**

ACN 153 050 198 of Level 31, 50 Bridge Street, Sydney NSW 2000

**(Lender)**

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Recitals

Lender has agreed to provide the Funding Portion to the State on the terms of this agreement.

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The parties agree as follows:

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# 1 Definitions and interpretation

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## 1.1 Definitions

The meanings of the terms used in this agreement are set out below, or to the extent that they are not set out below, they have the meaning given to them in the Project Agreement.

<b>Term</b>	<b>Meaning</b>
<b>Cancellation Date</b>	the day immediately after the Funding Date.
<b>Commitment</b>	the amount calculated in accordance with Schedule 2 (Commitment) of this agreement.
<b>Funding Date</b>	the Completion Payment Date.
<b>Funding Portion</b>	the amount of the Commitment.
<b>Funding Rate</b>	the interest rate payable by Finance Co under the Facility Agreement from time to time.
<b>Initial Receivables Refund Payment</b>	has the meaning given in the Receivables Purchase Deed.
<b>Interest Payment Date</b>	each Repayment Date.
<b>Interest Period</b>	each period determined as follows: <ol style="list-style-type: none"><li>1 the first Interest Period for the Principal Outstanding commences on the day after the Funding Date for the Principal Outstanding and ends on the next Interest Payment Date; and</li><li>2 each subsequent Interest Period for the Principal Outstanding (other than the final Interest Period) commences on the last day of the immediately preceding Interest Period for the Principal Outstanding and ends on the next Interest Payment Date; and</li><li>3 the final Interest Period for the Principal Outstanding commences on the last day of the immediately preceding Interest Period for the Principal Outstanding and ends on the final Repayment Date,</li></ol> provided that if an Interest Period ends on a day which is not a

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<b>Term</b>	<b>Meaning</b>
	Business Day, it is regarded as ending on the next Business Day.
<b>Outstanding Moneys</b>	<p>all debts and monetary liabilities of the State to Lender under or in relation to this agreement and in any capacity, irrespective of whether the debts or liabilities:</p> <ol style="list-style-type: none"><li>1 are present or future;</li><li>2 are actual, prospective, contingent or otherwise;</li><li>3 are at any time ascertained or unascertained;</li><li>4 are owed or incurred as principal, interest, fees, charges, taxes, duties or other imposts, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account; or</li><li>5 comprise any combination of the above.</li></ol>
<b>Principal Outstanding</b>	at any time, the principal amount of the outstanding Funding Portion at that time.
<b>Proceeds Account</b>	has the meaning given in the Common Terms Deed.
<b>Purchase Date</b>	has the meaning given in the Receivables Purchase Deed.
<b>Project Agreement</b>	the document entitled "Project Agreement - Eastern Goldfields Regional Prison Redevelopment Project" entered into by the State and Project Co and dated on or about the date of this agreement.
<b>Receivables Refund Payment</b>	has the meaning given in the Receivables Purchase Deed.
<b>Repayment Date</b>	the first day of each Repayment Period.
<b>Repayment Period</b>	each 'State Loan Agreement Repayment Period' specified in the Model Output Schedule or such other date as may be agreed between the parties.
<b>Repayment Instalment</b>	for a Repayment Period, the 'State Loan Repayment Instalment' for that Repayment Period specified in Schedule 3 (Repayment Instalment) of this agreement.



Term	Meaning
<b>State Loan Payment</b>	for any Repayment Date, the Repayment Instalment for that date plus interest payable in accordance with clause 2.9.
<b>Undrawn Commitment</b>	at any time, the Commitment at that time less the Principal Outstanding provided at that time.

## 1.2 Incorporated provisions

Clauses 1.2 to 1.4 of the Receivables Purchase Deed are incorporated in this agreement as if set out here in full except that references to 'this deed' shall be read as references to 'this agreement'.

## 2 Commitment, purpose and availability of Commitment

### 2.1 Provision of Commitment

Lender must make the Commitment available to the State on the terms of this agreement.

### 2.2 Purpose

The State must use the proceeds of the Funding Portion only for payment of the Completion Price.

### 2.3 Cancellation of Commitment

On the Cancellation Date, the Commitment is cancelled to the extent of the Undrawn Commitment.

### 2.4 Provision of Funding Portion

Lender must pay the Funding Portion to the State on the Funding Date in cleared funds, without any set off or counterclaim and (to the maximum extent permitted by law) free and clear of, and without deduction or withholding for or on account of, any Taxes.

### 2.5 Repayment

The State must repay the Principal Outstanding:

- (a) together with all other Outstanding Moneys, if the Project Agreement is terminated in accordance with clause 44 of the Project Agreement, on or before the date on which the State is required to pay the relevant Termination Amount in accordance with clause 44.5 of the Project Agreement; and
- (b) otherwise as required under clause 2.6.



## 2.6 Repayment instalments

Subject to clause 2.10, the State must repay the Principal Outstanding by paying to Lender the Repayment Instalment for each Repayment Date on the relevant Repayment Date or, if clause 3.1(b) applies, the date determined in accordance with clause 3.1(b).

## 2.7 Termination Amount

- (a) Lender agrees that the amounts due under clause 2.5(a) can never exceed the relevant Termination Amount (disregarding for this purpose only any deductions within the Termination Amount calculation relating to amounts due under clause 2.5(a)).
- (b) If the Initial Receivables Refund Payment is a negative amount, the amount payable by the State to the Lender under this agreement will be reduced by the absolute value of that negative amount until the Outstanding Moneys have been reduced to zero (provided that, for the avoidance of doubt, the Outstanding Moneys can never be less than zero).
- (c) If the Termination Amount is a negative amount, the amount payable by the State to the Lender under this agreement will be reduced by the absolute value of that negative amount until the Outstanding Moneys have been reduced to zero (provided that, for the avoidance of doubt, the Outstanding Moneys can never be less than zero).

## 2.8 Prepayment not permitted

The State may not voluntarily prepay any of the Principal Outstanding.

## 2.9 Interest

Subject to clause 2.10:

- (a) the State must pay interest on the Principal Outstanding for each Interest Period at the Funding Rate for the Interest Period; and
- (b) the State must pay accrued interest in arrears to Lender on each Interest Payment Date (or if clause 3.1(b) applies, the date determined in accordance with clause 3.1(b)).

## 2.10 Reduction in amounts payable

- (a) To the extent that the aggregate amount of principal and interest which the State is obliged to pay in respect of any Repayment Date exceeds:
  - (1) on or prior to the Expiry Date, the State Loan Payment; and
  - (2) after the Expiry Date, the Post Termination Service Amount,in each case for that Repayment Date, such principal and interest will be reduced to an amount equal to the State Loan Payment or Post Termination Service Amount (as applicable) in each case for that Repayment Date. Any reduction in accordance with this clause 2.10(a) will be taken to be applied first to reduce the interest due under clause 2.9 on the Interest Payment Date falling on that Repayment Date until the interest due has been reduced to zero and thereafter to reduce the Repayment Instalment due on that Repayment Date.





- (b) To the extent a Repayment Instalment due on a Repayment Date has been reduced in accordance with clause 2.10(a) (Deferred Repayment Instalment), on the next Repayment Date, the applicable Repayment Instalment and interest due under clause 2.9 on the Interest Payment Date falling on that Repayment Date must be applied in the following order:
  - (1) first to any Deferred Repayment Instalment which has not been paid;
  - (2) second to the Repayment Instalment due on that Repayment Date; and
  - (3) third to interest due on the Interest Payment Date falling on that Repayment Date.
- (c) Any reduction in the aggregate amount of interest due in accordance with clause 2.10(a) is an irrevocable and unconditional reduction of the relevant Outstanding Moneys and the State's obligations under this agreement in respect of those Outstanding Moneys are released and discharged to the extent of that reduction.
- (d) The State's obligations to pay any interest due under this agreement which is not paid under or by operation of clause 2.10(b) on a Repayment Date are hereby released and discharged to the extent of that non-payment.
- (e) To the extent any Deferred Repayment Instalment or Repayment Instalment is not paid on a Repayment Date under or by operation of clause 2.10(b), such amount of that Deferred Repayment Instalment and Repayment Instalment which is not paid is deemed to be a Deferred Repayment Instalment.
- (f) Notwithstanding anything to the contrary in any Project Document, no interest accrues on any Deferred Repayment Instalment arising from or in connection with this agreement nor is the State obliged to pay to the Lender any interest in relation to any Deferred Repayment Instalment.
- (g) To the extent that any State Loan Payment is reduced in accordance with clause 36 of the Project Agreement, the State's obligations under this agreement in respect of those Outstanding Moneys are released and discharged to the extent of that reduction.

## 3 Payments

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### 3.1 Manner of payment

- (a) All payments by Lender under this agreement must be made in accordance with the Payment Directions Deed in dollars in same day funds and by 1 pm (Melbourne time).
- (b) All payments by the State under this agreement must be made:
  - (1) on the date specified in clause 36.1 of the Project Agreement as the date on which each Quarterly Services Payment is expressed to be payable; and
  - (2) to the Proceeds Account,and in each case in dollars in same day funds and by 1 pm (Melbourne time).
- (c) Notwithstanding that the Proceeds Account is held by Project Co under the Common Terms Deed, any payment by the State to the Proceeds Account as



required by Clause 3.1(b)(2) will satisfy in full its obligation to pay such amount to Finance Co.

### **3.2 Payments in gross**

All payments which the State is required to make under this agreement must be without:

- (a) any set off, counterclaim or condition; or
- (b) any deduction or withholding for any Tax or any other reason unless the State is required to make a deduction or withholding by applicable law.

### **3.3 Appropriation of payments**

- (a) Subject to clause 2.10, all payments made by the State under this agreement may be appropriated as between principal, interest and other amounts as Lender determines or, failing any determination, in the following order:
  - (1) first, towards payment of interest due and payable under this agreement; and
  - (2) second, towards repayment or prepayment of the Principal Outstanding.
- (b) Any appropriation under clauses 3.3(a) overrides any appropriation made by the State.

### **3.4 Overdue amounts**

- (a) Interest shall accrue on any unpaid element of the Outstanding Moneys (other than amounts due under clause 2.5(a)) on and from the date and at the rate specified in clause 54.1 of the Project Agreement as if such amount was the amount of an Invoice on the basis of a 365 day year and for the actual number of days elapsed from and including the date specified for the commencement of interest accruing under clause 54.1 of the Project Agreement to but excluding the date of payment.
- (b) Interest shall accrue on any unpaid element of the Outstanding Moneys due under clause 2.5(a) on and from the date and at the rate specified in section 7 of schedule 10 of the Project Agreement on the basis of a 365 day year and for the actual number of days elapsed from and including the date specified for the commencement of interest accruing under section 7 of schedule 10 of the Project Agreement to but excluding the date of payment.

## **4 Representations and warranties**

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### **4.1 Representations and warranties by the State**

The State represents and warrants to, and for the benefit of, Lender that:

- (a) it has the power to execute, deliver and perform its obligations under this agreement and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) this agreement is enforceable against the State by Lender in accordance with its terms and is not void or voidable, subject only to a court's exercise of its



discretion in relation to equitable remedies and to the application of laws which affect creditors' rights generally; and

- (c) its unconditional execution and delivery of and compliance with its obligations under this agreement does not contravene:
  - (1) any law to which the State is subject;
  - (2) any agreement or instrument to which the State is a party; or
  - (3) any obligation of the State to any other person.

## 4.2 Representations and warranties by Lender

Lender represents and warrants to, and for the benefit of, the State that:

- (a) it is duly incorporated, validly exists, has the capacity to sue or be sued in its own name and to own its property and conduct its business as it is being conducted;
- (b) this agreement is enforceable against Lender by the State in accordance with its terms and is not void or voidable, subject only to a court's exercise of its discretion in relation to equitable remedies and to the application of laws which affect creditors' rights generally;
- (c) its unconditional execution and delivery of and compliance with its obligations under this agreement do not contravene:
  - (1) any law to which it or any of its property is subject or any order or directive from a government entity binding on it or any of its property;
  - (2) its constituent documents;
  - (3) any agreement or instrument to which it is a party;
  - (4) any obligation of it to any other person; and
  - (5) it does not enter into this agreement as trustee of any trust.

## 4.3 Repetition of representations and warranties

The representations and warranties in clauses 4.1 and 4.2 are taken to be repeated on each Funding Date on the basis of the facts and circumstances existing at that date.

## 4.4 Reliance on representations and warranties

Each party has executed this agreement and agreed to take part in the transactions that this agreement contemplates in reliance on the representations and warranties that are made or repeated in this clause.

# 5 Notices

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All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to a Project Document pursuant to that Project Document (each a Notice) must:

- (a) be in writing and addressed to the relevant address or facsimile number of the recipient stated below or to such other address or facsimile number as the recipient may have notified the sender:



- (b) *[not disclosed]*  
be signed by an authorised representative of the sender; and
- (c) be deemed to be duly given and received:
  - (1) if posted, on the second Business Day after the date of posting;
  - (2) if sent by facsimile, on receipt of a transmission report confirming successful transmission of the entire document; and
  - (3) if delivered, the day of delivery,but if such delivery or receipt is later than 4:00 pm (local time) on a day on which business is generally carried on in the place to which such communication is sent, it will be deemed to have been duly given or made at the commencement of business on the next such day in that place.

## 6 GST

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### 6.1 Interpretation

In this clause 6:

- (a) words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law;
- (b) GST Law has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999; and
- (c) Taxable Supply has the meaning given in the GST Law, excluding sections 84-5 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

### 6.2 Consideration GST – exclusive

- (a) **(Financial supplies):** The parties acknowledge that the supplies made pursuant to this agreement should be input-taxed financial supplies and should not be subject to GST but in the event that a tax authority, tribunal or court finally determines that any supply made pursuant to this agreement is a Taxable Supply, the parties agree that the following provisions apply.
- (b) **(Payment):** In addition to any other consideration, the recipient of a Taxable Supply made under or in connection with this agreement (which recipients may include, for the avoidance of doubt, State Associates under a Project Document) (the Recipient) must pay to the party making the Taxable Supply (the Supplier) the amount of GST in respect of the Taxable Supply. This subclause does not apply if the consideration specified for the Taxable Supply is expressly agreed to be GST inclusive.
- (c) **(Excess or deficiency):** If the amount paid by the Recipient to the Supplier in respect of GST (whether because of an adjustment (within the meaning of the GST Law) or otherwise):
  - (1) is more than the GST on the relevant Supply, then the Supplier will refund the excess to the Recipient; or
  - (2) is less than the GST on the relevant Supply, then the Recipient will pay the deficiency to the Supplier.



Any refund, credit or further amount, as applicable, will be calculated by the Supplier in accordance with GST Law and the Supplier or Recipient as applicable, must pay the refund, credit or further amount within 14 days after becoming aware of the variation in the amount of GST payable. If an adjustment (within the meaning of the GST Law) has occurred, the Recipient is not obliged to pay any amount under paragraph (ii) of this clause unless and until it receives an adjustment note (within the meaning of the GST Law).

- (d) **(GST Documentation):** The Recipient is not obliged to pay any amount in respect of GST to the Supplier unless and until the Supplier issues a Tax Invoice to the Recipient in respect of the Taxable Supply. If an adjustment (within the meaning of the GST Law) has occurred, the Supplier must issue an Adjustment Note to the Recipient.
- (e) **(Revenue net of GST):** Any reference in this agreement to price, value, sales, revenue, profit or a similar amount (Revenue), will be a reference to the GST exclusive component of that Revenue unless the contrary intention is expressed.
- (f) **(Cost net of GST):** Any reference in this agreement to cost, expense, liability or other similar amount (Cost), will be a reference to that Cost reduced by the Input Tax Credits in respect of such Cost.
- (g) **(GST Group):** Any reference in this agreement to GST that is payable by an entity includes any GST that is payable by the representative member of any GST Group of which that entity is a member and input tax credits to which an entity is entitled include input tax credits to which the representative member of the entity's GST Group is entitled.
- (h) **(State Associate):** Any reference in this clause to a Recipient of a Taxable Supply includes, where relevant, any State Associate and this clause so applies to such Recipients.

## 7 General

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### 7.1 Duty

- (a) Lender as between the parties is liable for and must pay all duty (including any fine or penalty except where it arises from default by the other party) on or relating to this agreement, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If a party other than Lender pays any duty (including any fine or penalty) on or relating to this agreement, any document executed under it or any dutiable transaction evidenced or effected by it, Lender must pay that amount to the paying party on demand.

### 7.2 Amendment

Except as otherwise expressly provided in this agreement, this agreement may only be varied by a deed executed by or on behalf of each party.

### 7.3 Waiver and exercise of rights

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under



this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this agreement.

- (b) A waiver or consent given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

#### **7.4 Further steps**

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

#### **7.5 Assignment**

- (a) Subject to the Finance Side Deed, a party must not assign, transfer or dispose of, or otherwise deal with any of its rights, title or interest in or under this agreement without the prior written consent of the other parties except by way of a Security Interest constituted by a Finance Document or the State Deed of Charge.
- (b) Any purported dealing in breach of this clause is of no effect.

#### **7.6 Termination**

The Lender agrees that it will not terminate this agreement as a direct consequence of a breach by the State of its obligations under this agreement unless the Project Agreement has been terminated, or will be terminated contemporaneously with the termination of this agreement, in each case in accordance with its terms.

#### **7.7 Counterparts**

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

#### **7.8 Governing law and jurisdiction**

This agreement is governed by and construed in accordance with the Law applying in the State of Western Australia, and the parties to this agreement irrevocably submit to the non-exclusive jurisdiction of the courts of that State and the courts competent to determine appeals from those courts.



## Schedules

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## Schedule 1

### Notice details

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**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**

Address *[not disclosed]*  
Attention *[not disclosed]*  
Phone *[not disclosed]*  
Email *[not disclosed]*

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**Stella EGRP Finance Pty Limited**

Address *[not disclosed]*  
Attention *[not disclosed]*  
Phone *[not disclosed]*  
Fax *[not disclosed]*  
Email *[not disclosed]*

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## Schedule 2

### Commitment

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The Commitment is calculated on the Funding Date, where the Commitment is:

*[not disclosed]*



## Schedule 3

### State Loan Repayment Instalment

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Repayment Instalments are the following on any Repayment Date:

*[not disclosed]*



## Signing page

### Executed as an agreement

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**Signed 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:

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

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Signature of witness

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Name of witness

**Signed 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:

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

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Signature of witness

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Name of witness

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Signed for  
**Stella EGRP Finance Pty Limited**  
by its attorney under a power of attorney dated 7 December 2012

*sign here* ► \_\_\_\_\_  
Attorney who declares that the attorney has not  
received any notice of the revocation of the power  
of attorney

*print name* \_\_\_\_\_

in the presence of

*sign here* ► \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_

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