



Department of **Education**

Department of **Treasury**

WA Schools PPP Project

D&C Direct Deed

The State of Western Australia

and

Minister for Works

and

Minister for Education

and

EduWest Project Co Pty Ltd in its personal capacity and in its capacity as trustee for the EduWest Project Trust (**Project Co**)

and

Badge Construction (WA) Pty Ltd

and

Perkins (WA) Pty Ltd

(together, the **D&C Subcontractor**)

and

Each person listed in Schedule 2 (together, the **D&C Subcontractor Guarantor**)

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D&C DIRECT DEED

This deed is made on 2015
between

The State of Western Australia (**State**)

and

The Minister for Works, a body corporate constituted under Section 5 of the *Public Works Act 1902 (WA)* (**Minister for Works**)

and

The Minister for Education, a body corporate constituted under Section 214 of the *Schools Education Act 1999 (WA)* (**Minister for Education**)

and

EduWest Project Co Pty Ltd ACN 608 027 434 in its personal capacity and in its capacity as trustee for the EduWest Project Trust (**Project Co**)

and

Badge Construction (WA) Pty Ltd ABN 31 099 721 089

and

Perkins (WA) Pty Ltd ABN 60 008 844 862

(together, the **D&C Subcontractor**)

and

each person listed in Schedule 2 (together, the **D&C Subcontractor Guarantor**)

and the parties agree as follows:

Recitals

- A. The background to the Project is set out in the Deed.
- B. Project Co has, in accordance with the D&C Subcontract, subcontracted its obligations to undertake certain of the Development Activities to the D&C Subcontractor.
- C. The D&C Subcontractor Guarantor has, in accordance with the D&C Guarantee, guaranteed to Project Co the performance of the D&C Subcontractor's obligations in accordance with the D&C Subcontract.
- D. The parties have agreed that upon termination by the State of the Deed, the State will have the option of exercising certain rights in relation to the D&C Subcontract and the D&C Subcontractor Guarantee on the terms stated in this deed.

Operative Provisions

1. Definitions and Interpretation**1.1 General**

- (a) In this deed, unless the context otherwise requires, or where defined in Clause 1.2, capitalised terms in this deed have the meaning given to them in Clause 1 of the Deed.
 - (b) The use of the word "remedy" or any form of that word in respect of a Default Event means that the Default Event must be remedied or its effects overcome.
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1.2 Definitions

In this deed, unless the context indicates otherwise:

Term	Meaning
<i>Additional Obligor</i>	means an entity which is wholly owned by the State.
<i>Additional Obligor Step-in Notice</i>	means the notice given in accordance with Clause 5.1(a)(iv).
<i>Additional Obligor Step-Out Date</i>	is the date determined in accordance with Clause 5.3(d).
<i>Assumption Date</i>	has the meaning given to it in Clause 5.3(a).
<i>D&C Document</i>	means in respect of the D&C Subcontractor, the D&C Subcontract, and in respect of the D&C Guarantor, the D&C Guarantee.
<i>D&C Parties</i>	means the D&C Subcontractor and D&C Subcontractor Guarantor and D&C Party means either of them.
<i>D&C Subcontract</i>	means the contract for all or part of the performance of all or part of the Development Phase Activities entered into, or to be entered into, between Project Co, Badge Construction (WA) Pty Ltd and Perkins (WA) Pty Ltd dated on or about Financial Close.
<i>D&C Subcontractor Consent Deed</i>	has the meaning given to it in the Deed.
<i>D&C Subcontractor Statement</i>	means a Default Event Notice.
<i>D&C Subcontractor's Associates</i>	means any: <ul style="list-style-type: none"> (a) Subcontractor of the D&C Subcontractor; (b) officers, agents, advisers, consultants, contractors and employees of the D&C Subcontractor; and (c) any visitor to the Site invited onto the Site by the D&C Subcontractor or a D&C Subcontractor's Associate.
<i>D&C Subcontractor Guarantee</i>	means the guarantee of that name described in the D&C Subcontract.
<i>Deed</i>	means the document entitled "The WA Schools PPP Project Project Deed" between the State and Project Co dated on or about the date of this deed.

Term	Meaning
<i>Default Event</i>	means: <ul style="list-style-type: none">(a) any breach by Project Co of any of its obligations under the D&C Subcontract; or(b) any other event or circumstance, which alone or with the giving of notice or passage of time or both, would entitle the D&C Subcontractor to terminate, rescind, accept the repudiation of, or suspend any or all of the D&C Subcontractor's obligations under, the D&C Subcontract.
<i>Default Event Notice</i>	means a notice given in accordance with Clause 4.2(a).
<i>Encumbrance</i>	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.
<i>Material Adverse Effect</i>	means a material adverse effect on: <ul style="list-style-type: none">(a) the ability of Project Co or the D&C Subcontractor to perform and observe its obligations under any Project Document to which it is a party;(b) the rights of the State under any Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a Project Document; or(c) the performance of, or the cost of undertaking, the Development Phase Activities.
<i>New D&C Subcontractor Guarantee</i>	has the meaning given to it in Clause 6.4(a)(i).
<i>Novation Date</i>	means: <ul style="list-style-type: none">(a) in connection with Clause 6.3, the later of the date of the Novation Notice and the date the D&C Subcontractor consents or is deemed to have consented to the novation (or such date as is determined in accordance with clause 11); and(b) otherwise, the date of the Novation Notice.
<i>Power</i>	means any power, right, authority, discretion or remedy, whether express or implied.
<i>Novation Notice</i>	has the meaning given in Clause 6.1.

Term	Meaning
<i>Receiver</i>	means a receiver or receiver and manager appointed by the State in accordance with the State Security.
<i>Secured Money</i>	has the meaning given in the State Security.
<i>Security Interest</i>	has the meaning given to the term in Section 12 of the PPSA.
<i>State Cure Notice</i>	means the notice given by the D&C Subcontractor to the State in accordance with clause 4.2(c).
<i>Statement Beneficiary</i>	has the meaning given to it in Section 4(a) of Schedule 1.
<i>State Representative</i>	means the person referred to as such in Clause 2.1.
<i>Step-in Period</i>	means the period determined in accordance with Clause 5.1(c).
<i>Step-in Right</i>	has the meaning given to it in Clause 5.1(b).
<i>Subsidiary</i>	has the same meaning as “subsidiary” in the Corporations Act.
<i>Substitute Party</i>	has the meaning given to it in Clause 6.1(a).
<i>Trustee Documents</i>	each Project Document to which Project Co is a party as trustee of the Project Trust.

1.3 Interpretation

In this deed unless the context otherwise requires:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Deed, Schedule and clause references)**: a reference to:
- (i) a party, Clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this deed; and
 - (ii) a section is a reference to a section of a Schedule; and
 - (iii) a paragraph is a reference to a paragraph in the clause in which the reference appears;
- (d) **(Deed as amended)**: a reference to this deed or to any other deed, agreement, or instrument includes a reference to this deed or such other

- deed, agreement, or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(Party)**: a reference to a 'party' is to a party to this deed;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, a body politic, an association or a joint venture (whether incorporated or unincorporated), a partnership, a trustee and a trust;
- (g) **(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 persons taking part by way of novation;
- (h) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (i) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **("includes")**: "includes" will be read as if followed by the phrase "(without limitation)";
- (k) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) **(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;
- (m) **("\$")**: a reference to "\$", AUD or dollar is to Australian currency;
- (n) **(time)**: a reference to time is a reference to time in Perth, Australia;
- (o) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes communication by email;
- (p) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (q) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (r) **("may")**: the term "may", when used in the context of a power, right or remedy exercisable by the State or Principal, as applicable, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (s) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this deed which:
- (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity; and
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- (t) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.
- (u) **(no double counting)**: if this deed requires calculation of an amount payable to a party there must be no double counting in calculating that amount, which, for the avoidance of doubt includes amounts calculated in accordance with the Schedules to this deed.

1.4 Related matters

- (a) **(Provisions limiting or excluding Liability)**: Any provision of this deed 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) **(Cost of performing obligations)**: Each party must perform its obligations in accordance with this deed at its own cost, unless expressly provided otherwise.
- (c) **(D&C Subcontractor obligations)**: In complying with or accepting any obligation or risk in accordance with this deed, the D&C Subcontractor must procure that, to the extent applicable, each D&C Subcontractor's Associate is required to comply with or accept the relevant obligation or risk and not cause the D&C Subcontractor to breach its obligations in accordance with this deed.
- (d) **(Business Day)**: If the day on or by which any thing is to be done in accordance with this Agreement is not a Business Day, that thing must be done on the next Business Day.
- (e) **(Deed composition)**: This deed comprises:
 - (i) Clauses 1 to 17; and
 - (ii) Schedule 1 (D&C Subcontractor Statements).

1.5 This deed prevails

To the extent of any inconsistency, ambiguity or discrepancy between this deed and the D&C Subcontract, this deed prevails to the extent of that inconsistency.

1.6 Continuance of rights

- (a) This deed does not affect the Liabilities, rights, powers or remedies of a party in accordance with any other Project Document.
- (b) The failure by a party (other than Project Co) to comply with the provisions of this deed does not affect the Liability of Project Co in accordance with any other Project Document.

1.7 State Project Documents

Each of the D&C Parties agrees that it has received a copy of the State Project Documents and has provided details of the terms and conditions contained in the State Project Documents to the D&C Subcontractor Guarantor.

1.8 Commencement

The rights and obligations of the parties in accordance with this deed commence on the date that the D&C Subcontract becomes unconditional and continues until the earlier of the date of termination of the Deed and the date of termination of the D&C Subcontract.

1.9 Representations by D&C Subcontractor

The D&C Subcontractor and the D&C Subcontractor's Guarantor each represent and agree that:

- (a) **(does not violate Law)**: the execution, delivery and performance of the Project Documents to which it is a party does not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
 - (b) **(Project Documents)**: it has power to execute, deliver and perform its obligations in accordance with each Project Document to which it is a party and all necessary corporate action has been taken to authorise it;
 - (c) **(valid and legally binding)**: each Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
 - (d) **(legality)**: the execution, delivery and performance by it of its obligations in accordance with the Project Documents to which it is a party does not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
 - (e) **(status)**: it is a corporation limited by shares duly and validly incorporated and existing in accordance with the Corporations Act;
 - (f) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon the D&C Subcontractor or the D&C Subcontractor Guarantor's ability to perform its financial and other obligations under the Project Documents to which it is a party;
 - (g) **(solvency)**: it is solvent and is able to pay its debts as and when they become due;
 - (h) **(liquidation)**: it is not:
 - (i) insolvent under administration or insolvent (each as defined in the Corporations Act); or
 - (ii) in liquidation, provisional liquidation, under administration to be wound up or had a controller (as defined in the Corporations Act) appointed to any of its property;
 - (i) **(no misrepresentation)**: all the information which it provided or will provide to the State is or will be true and correct in all material respects at the date of this deed or of its later provision, and is not, by omission of information, or otherwise, misleading;
 - (j) **(copies of documents)**: all copies or originals of documents or instruments provided by it to the State (or by it to Project Co and then to the State) in connection with any Project Document to which it is a party are or will be, at the date of this deed or of their later provision, true copies or originals (as applicable) of the documents or instruments which they purport or have been represented to be;
 - (k) **(no trustee)**: it is not acting and will not act at any time during the Term as a trustee or an agent in connection with the Project;
 - (l) **(accounts)**:
 - (i) its most recent consolidated and unconsolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' (as defined in the Corporations Act) **(Subsidiaries)** state of affairs as at the date to which they relate and the results of its and its Subsidiaries' operations for the accounting period ended on such date;
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- (ii) there has been no material change in its or its Subsidiaries' state of affairs since such date; and
 - (iii) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
- (m) **(no default):**
 - (i) it is not in default of any Project Document to which it is a party; and
 - (ii) nothing has occurred which would, with the giving of notice or lapse of time, constitute an event of default, cancellation, prepayment event (in accordance with a bona fide right to exercise prepayment) or similar event (whatever called) in accordance with any such Project Document;and which would have a Material Adverse Effect;
- (n) **(no undisclosed agreement):** there are no documents or agreements in existence at the date of this deed and there will not be any documents or agreements in the future which have not been or will not be disclosed to the State which are material in the context of the Project Documents to which it is a party or, to the best of its knowledge and belief, the Project or which have the effect of varying any such Project Document and, in connection with such Project Documents to which the State is not a party, performance of which would have a Material Adverse Effect;
- (o) **(no immunity):** neither it nor any of its assets enjoys any immunity from set-off, suit or execution; and
- (p) **(own investigations):** in entering into the Project Documents to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State or any State Associate, Project Co or any other person unless, in connection with Project Co or any person other than the State and the State Associates, expressly set out or permitted to do so in accordance with Project Documents to which it is a party.

The D&C Subcontractor, the D&C Subcontractor's Guarantor and Project Co acknowledge that the State has relied on the representations and warranties in this Clause 1.9 in entering into this deed.

1.10 Project Trust warranties and representations

- (a) **(trust power):** Project Co has power as trustee of the Project Trust to execute the Trustee Documents and enter into every transaction under which Secured Money is or becomes payable;
 - (b) **(due performance):** in executing the Trustee Documents and entering into the transactions referred to in Clause 1.10(a) Project Co has properly performed its obligations to the Trust Beneficiaries;
 - (c) **(trust action taken):** all necessary action required by the Project Trust Deed to authorise Project Co's unconditional execution and delivery of, and compliance with its obligations under, the Trustee Documents has been taken;
 - (d) **(sole trustee):** Project Co is the only trustee of the Project Trust;
 - (e) **(no removal action):** to the best of its knowledge and belief, no action has been taken to remove Project Co as trustee of the Project Trust or to appoint an additional trustee of the Project Trust;
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- (f) **(right of indemnity):**
 - (i) Project Co has a right to be fully indemnified out of the Trust Property in relation to the Secured Money;
 - (ii) Project Co has not released or disposed of its equitable lien over the Trust Property which secures that indemnity;
 - (iii) Project Co has not committed any breach of trust or done or omitted to do anything which has prejudiced or limited its rights of indemnity or equitable lien; and
 - (iv) the Trust Property is sufficient to satisfy that indemnity;
- (g) **(no trust default):** Project Co has not defaulted in the performance and observance of its obligations as trustee of the Project Trust in any material respect;
- (h) **(no trust termination):** to the best of its knowledge and belief, no action has been taken to terminate the Project Trust;
- (i) **(full trustee disclosure):** Project Co has disclosed to the State full details of:
 - (i) the Project Trust and any other trust or fiduciary relationship affecting the Trust Property and, without limitation, has given to the State copies of any instruments creating or evidencing the Project Trust; and
 - (ii) its other trusteeships (if any);
- (j) **(trust duly constituted):** the Project Trust is duly constituted and is not void, voidable or otherwise unenforceable; and
- (k) **(Trust Beneficiaries' rights):** the rights of the Trust Beneficiaries in relation to, and their interest in, the Trust Property are subject to:
 - (i) the rights of the State in relation to, and its interest in, the Trust Property created by this document; and
 - (ii) any rights or interests in the Trust Property to which the State may from time to time be subrogated.

1.11 Liability

- (a) Project Co is liable under the Trustee Documents as trustee of the Project Trust and in Project Co's own right.
- (b) A reference in any Trustee Document to:
 - (i) Project Co includes Project Co as trustee of the Project Trust and Project Co in its own right; and
 - (ii) Project Co's property includes property owned by Project Co as trustee of the Project Trust and property owned by Project Co in its own right.

2. Delegation

2.1 Parties' representatives

The parties may exercise their rights or perform their obligations in accordance with this deed through their representatives appointed in accordance with the Deed or the D&C Subcontract (as applicable).

2.2 Further State delegations

- (a) The State may at any time delegate the exercise of any power or authority of the State in accordance with this deed to a person other than the then appointed State Representative and may terminate or vary that delegation.
- (b) In connection with any delegation in accordance with Clause 2.2(a), the State will promptly notify Project Co 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 2.2 will be deemed to be a direction of the State.

2.3 State Representative as Agent

The State Representative may carry out its powers, authority and functions in accordance with this Clause 2, as the agent of the State.

2.4 Notice of State Representative or delegation

- (a) Project Co may, at any time, request that the State notify Project Co as to:
 - (i) the identity and address of the State Representative or delegate to whom powers or functions or responsibilities of the State under this deed are delegated under Clause 2.2; and
 - (ii) any changes in the identity and address of the State Representative or delegated representative.
- (b) Project Co is entitled to rely upon a notice given by the State in accordance with Clause 2.4(a) unless and until given notice of revocation if that delegation or appointment.

3. Acknowledgements

3.1 Consent to State Security

- (a) The D&C Subcontractor and the D&C Subcontractor Guarantor:
 - (i) **(grant of security)**: consent to the grant of an Encumbrance in the form of the State Security in favour of the State over all assets and undertakings of Project Co including Project Co's right, title and interest under the D&C Subcontract and the D&C Subcontractor Guarantee and the assignment of Project Co's right title and interest in the D&C Subcontract and the D&C Subcontractor Guarantee to the State by way of security;
 - (ii) **(acknowledgement of rights)**: acknowledge the rights created in accordance with the State Security including the appointment by Project Co of the State as attorney of Project Co to do, perform and exercise all things, acts and rights in accordance with the D&C Subcontract on behalf of and for the account of Project Co;
 - (iii) **(no Liabilities)**: agree that nothing in the State Security will cause the State to assume any Liabilities in accordance with the D&C Subcontract or the D&C Subcontractor Guarantee except as contemplated by Clause 10;
 - (iv) **(no Default Event)**: acknowledge and agree that:
 - (A) the State Security does not; and
 - (B) the exercise by the State of its rights in accordance with the State Security will not,

constitute a Default Event; and

- (v) **(notice of any other assignment):** confirm that, with the exception of the Encumbrances created in accordance with the Finance Documents or as otherwise notified to the State, the D&C Subcontractor has not received notice of any other Encumbrance or assignment by Project Co of any right, title, interest in or benefit of Project Co under the D&C Subcontract.
- (vi) **(no set-off):** acknowledge and agree that as of the date of this deed, it has no knowledge of any right of set-off or counterclaim which it may have against Project Co so as to diminish any money payable by it to Project Co under a D&C Document, except only where the right of set-off or counterclaim is contained within the D&C Document.

3.2 D&C Subcontractor Guarantor Acknowledgement

The D&C Subcontractor Guarantor agrees that the grant of the State Security does not, and the exercise by the State of its rights in accordance with the State Security or this deed will not, give rise to any rights by the D&C Subcontractor Guarantor to revoke or terminate the D&C Subcontractor Guarantee.

3.3 Acknowledgement of State's rights

- (a) **(State's rights):** The D&C Subcontractor acknowledges:
 - (i) the State's rights and Project Co's obligations in accordance with Clauses 2.14 (Reasonable endeavours of the State), 9.2 (Subcontracting), 10 (Health and safety), 17.1 (State's right to enter, inspect and test), 13.3 (Design Departures), 31 (Intervening Events), 33.2 (Handover), 34.5 (Interest), 39 (Insurance), 40 (Default), 41 (Termination), 44 (Representations and warranties), 48 (Assignment and changes in ownership), 51 (Intellectual Property Rights), 52 (Confidential Information and disclosure) and 55 (Probity Events and Disciplinary Events) of the Deed; and
 - (ii) that it has been provided with a copy of the clauses referred to in Clause 3.3(a)(i).
- (b) **(Additional clauses):** To the extent that the D&C Subcontractor or D&C Subcontractor Guarantor require:
 - (i) additional clauses in order to interpret the clauses referred to in Clause 3.3(a)(i); or
 - (ii) a copy of any definition of a capitalised term in this deed which has the meaning given in clause 1 of the Deed,

then the D&C Subcontractor may request these additional clauses, or definitions (as applicable) from the State, which request may not be unreasonably denied by the State.
- (c) **(Facilitation of rights):** The D&C Subcontractor must exercise its rights in accordance with the D&C Subcontract in a way which facilitates the effective exercise by the State of the rights and protections referred to in the clauses listed in Clause 3.3(a)(i) and will on reasonable notice permit the relevant State Representative to have access to, and take copies of, the records, reports, documents and other papers to which the State is entitled to have access in connection with the State's rights referred to in Clause 3.3(a)(i).
- (d) **(Subcontracting):** The D&C Subcontractor will not subcontract any of its obligations under the D&C Subcontract without ensuring that the D&C

Subcontract complies with Cause 9.4 (Requirements for Subcontracting) of the Deed.

- (e) **(Probity Investigations):** Without limiting the previous paragraphs, the D&C Subcontractor and the D&C Subcontractor Guarantor each acknowledge and agree that:
- (i) in accordance with Clause 9.2 (Subcontracting) and Clause 55.2(b) (Consents required for Probity Investigation) of the Deed, the State may require Project Co to conduct Probity Investigations of a D&C Subcontractor Associate;
 - (ii) it will consent to the undertaking of a Probity Investigation in connection with it or procure the consent of a D&C Subcontractor Associate to a Probity Investigation;
 - (iii) it will not appoint and will ensure that no other person appoints a person to the position of a D&C Subcontractor Associate following a Probity Investigation unless the prior consent of the State is obtained; and
 - (iv) it will remove any person from the position of a D&C Subcontractor Associate, if following the results of a Probity Investigation the State considers that it is not appropriate for that person to continue to be a D&C Subcontractor Associate.
- (f) **(Continued performance):** During the period in which the State is exercising a right referred to in paragraph 3.3(a), the State may, in accordance with the Deed and the D&C Subcontract, require the suspension or the continuation of performance by the D&C Subcontractor of its obligations under the D&C Subcontract, and if it does so, the D&C Subcontractor will comply with this requirement and with all reasonable directions of the State in relation to the performance of the D&C Subcontract by the D&C Subcontractor during such period.

3.4 By Project Co

Project Co is bound by, and must cooperate in, the implementation of this deed. It acknowledges that this deed is intended to benefit only the D&C Subcontractor and the State and does not in any way affect any obligation of Project Co under the D&C Subcontract or under any other Project Document.

3.5 Undertakings of the D&C Subcontractor

The D&C Subcontractor undertakes to the State that it must:

- (a) **(proper performance):** duly and punctually perform all of its duties under the D&C Subcontract;
 - (b) **(notification of Default Event):** notify the State of any Default Event promptly after it gives notice of that Default Event in accordance with Clause 41.4B(a)(i) or 41.4B(a)(ii) (as applicable) of the D&C Subcontract;
 - (c) **(documents in relation to Default Event):** give the State a copy of all documents issued by the D&C Subcontractor to Project Co in relation to a Default Event promptly after giving such documents to Project Co;
 - (d) **(no amendment without consent):** not, without first obtaining the written consent of the State:
 - (i) make or permit any amendment or replacement of or addition to;
 - (ii) subject to Clauses 4.2 and 4.4 terminate, surrender, rescind, suspend or accept repudiation of;
 - (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in; or
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- (iv) allow any express waiver of its material rights and obligations in accordance with,
- the D&C Subcontract, provided that the State will not withhold its consent to an amendment which corresponds to an amendment to which it has consented in accordance with the Deed;
- (e) **(deed of accession)**: not novate, assign or substitute any of its rights, obligations or interest in the D&C Subcontract without first procuring that the proposed novatee, assignee or substitute executes a deed in favour of the State (in form and substance approved by the State) in accordance with which the novatee, assignee or substitute agrees to accept and be bound by this deed as if it were the D&C Subcontractor;
- (f) **(attend meetings and inspections)**: when reasonably requested by the State:
- (i) attend meetings with the State;
- (ii) provide the State with:
- (A) full access to the Sites or any other place where materials are being prepared or stored, to the extent provided in the Deed; and
- (B) any other information, records or documents that the State reasonably requires in connection with undertaking the Development Activities or compliance with the D&C Subcontract; and
- (iii) permit the State or any nominee of the State to attend all tests and inspections to be carried out in connection with the Development Activities in accordance with the terms of the D&C Subcontract;
- (g) **(access to records)**: permit the State to inspect all documents of whatever nature prepared or kept by the D&C Subcontractor in relation to the Project;
- (h) **(competent Subcontractors)**: not enter into, or permit the entry of, any Subcontract unless the proposed Subcontractor is an experienced, creditworthy, reputable and competent party which holds any necessary registrations or licences and which will have sufficient resources to perform the works of the services that are the subject of the proposed Subcontract; and
- (i) **(requirements for Subcontracting)**: not engage, or permit the engagement, of any Subcontractor, or enter into or permit the entry into of any Subcontract, unless:
- (i) if the State requires Probity Investigations to be carried out, the State's probity requirements as described in Clauses 55.1 to 55.4 (Probity Events and Disciplinary Events) of the Deed are satisfied; and
- (ii) the Subcontract contains provisions giving effect to the exercise by the State of:
- (A) its rights and protections under and contains all relevant provisions prescribed by (if applicable), Clauses 9.2 (Subcontracting), 9.4 (Requirements for Subcontracting), 10 (Health and safety), 13.3 (Design Departures), 17.1 (State right to enter, inspect and test), 31 (Intervening Events) 33.2 (Handover), 34.5 to 34.7 (Interest, Refund and Set-off), 39 (Insurance), 40 (Default), 41 (Termination), 43 (Dispute Resolution procedure), 44 (Representations and warranties), 48 (Assignment and
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change in ownership), 51 (Intellectual Property Rights), 52 (Confidential Information and disclosure) and 55.1 to 55.4 (Probity Events and Disciplinary Events) of the Deed; and

- (B) its rights to take an assignment of any performance bond in accordance with its terms.

3.6 Performance bonds

- (a) **(Issue and maintenance):** The D&C Subcontractor must procure the issue of and ensure the maintenance of Performance Bonds for the Development Phase in accordance with the terms of the D&C Subcontract.
- (b) **(Performance Bonds):** The State may require Project Co to make a demand under any Performance Bond in accordance with the Deed and the Finance Direct Deed.
- (c) **(Demand on Performance Bonds):** The D&C Subcontractor must inform the State when a demand is made under any Performance Bond promptly after it becomes aware of such a demand.

3.7 Information

Project Co and the D&C Parties each acknowledge and agree that:

- (a) **(information purpose):** any information, data and documents provided by the State:
- (i) are provided for information purposes only and all of the State's and its Associates' Intellectual Property Rights therein remain the property of the State or its Associates (as the case may be); and
 - (ii) do not form part of this deed or constitute an invitation, offer or recommendation by or on behalf of the State or its Associates;
- (b) **(no Liability):** to the extent permitted by Law, neither the State nor any of its Associates will have any Liability to the D&C Parties or any D&C Subcontractor Associate, nor will a D&C Party or any D&C Subcontractor Associate be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or any of its Associates arising in connection with:
- (i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in paragraph (a) by the D&C Parties, or any other person to whom such information is disclosed by the D&C Parties, the D&C Subcontractor Associates or any person on any D&C Party's behalf;
 - (ii) any reference to the State in a D&C Document; or
 - (iii) any review of, comments upon, acceptance, approval or certification of the form or substance of a D&C Document by the State.

3.8 D&C Subcontract not to affect State rights

Project Co and the D&C Parties each acknowledge and agree that:

- (a) **(rights not affected):** where the D&C Subcontractor is expressed in the D&C Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Deed or an equivalent or similar right of Project Co:
- (i) this does not of itself expand Project Co's rights, or the State's Liability, under the Deed to include the compensation or relief to which the D&C Subcontractor is or may become entitled under the D&C Subcontract; and

- (ii) Project Co's rights, and the State's Liability, under the Deed will be determined solely in accordance with the terms of the Deed;
- (b) **(risk of discrepancy)**: as between the State (on the one hand) and Project Co and the D&C Parties (on the other hand), Project Co and the D&C Parties accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the D&C Subcontract and the Deed; and
- (c) **(dealing directly with the State)**: notwithstanding anything to the contrary in the D&C Subcontract, neither D&C Party has any right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
 - (i) expressly provided to the contrary in the Deed or this deed; or
 - (ii) the State consents.

4. Right to remedy before termination of D&C Subcontract

4.1 The State's right to remedy

- (a) The D&C Subcontractor must give the State:
 - (i) Default Event Notices; and
 - (ii) State Cure Notices,as required by Clause 4.2.
- (b) On receiving a State Cure Notice, the State may (but is not obliged to) take steps to:
 - (i) remedy, or procure the remedy of, the Default Event; or
 - (ii) if the Default Event is not capable of remedy, commence and continue to perform the obligations of Project Co in accordance with the D&C Subcontract.

4.2 D&C Subcontractor's right to terminate

The D&C Subcontractor may only terminate, rescind, accept the repudiation of or (subject to Clause 4.3 and Clause 4.4) suspend the performance of any or all of its obligations in accordance with the D&C Subcontract if:

- (a) the D&C Subcontractor has given a notice to the State that complies with the requirements of Schedule 1 (D&C Subcontractor Statements) (**Default Event Notice**);
- (b) any remedy period available to the Financiers in accordance with the D&C Subcontractor Consent Deed for the Default Event has expired without a remedy being achieved; and
- (c) the D&C Subcontractor has given a notice (**State Cure Notice**) to the State confirming that, either:
 - (i) the requirements of Clause 4.2(b) are satisfied; or
 - (ii) the Financiers do not have any right to remedy the Default Event in accordance with the D&C Subcontractor Consent Deed; and
- (d) where:
 - (i) the Default Event is capable of remedy:
 - (A) the Default Event is not remedied within 20 Business Days of the date on which the State receives the State Cure Notice; or

- (B) but is not capable of remedy within 20 Business Days, the State (or an Additional Obligor or Receiver) has not commenced remedying the Default Event within 20 Business Days of the date on which the State receives the State Cure Notice;
- (ii) the Default Event is not reasonably capable of remedy in any time period and the Default Event Notice contains a claim for reasonable compensation and neither Project Co nor the State has provided that compensation:
 - (A) within 20 Business Days of the date on which the State receives the State Cure Notice; or
 - (B) if the amount of compensation has been referred to dispute resolution in accordance with Clause 11, within 20 Business Days of the dispute being finally resolved;
- (iii) the Default Event is not reasonably capable of remedy in any time period and the Default Event Notice does not contain a claim for reasonable compensation – the State (or an Additional Obligor or Receiver) does not commence and continue to perform Project Co's obligations in accordance with the D&C Subcontract within 20 Business Days of the date on which the State receives the State Cure Notice; or
- (iv) the State notifies the D&C Subcontractor that it elects not to remedy the Default Event.

4.3 Early suspension of the Development Activities

- (a) If:
 - (i) the D&C Subcontractor, but for the operation of Clause 4.2, would have a right to suspend the Development Activities in accordance with the D&C Subcontract; and
 - (ii) the D&C Subcontractor has issued a State Cure Notice in connection with the Default Event,and either:
 - (iii) the State has not undertaken to pay to the D&C Subcontractor the amounts stated in the Default Event Notice that gave rise to the D&C Subcontractor's right to suspend within 10 Business Days of receipt of the State Cure Notice, or if the State refers the amounts in the Default Event Notice to Dispute, within 10 Business Days of the dispute being resolved;
 - (iv) the State has undertaken to pay the D&C Subcontractor such amounts for a stated period and that period has expired without being extended by the State on terms reasonably acceptable to the D&C Subcontractor; or
 - (v) the State notifies the D&C Subcontractor that it elects not to remedy the Default Event,then the D&C Subcontractor may suspend the performance of the Development Activities.
 - (b) The D&C Subcontractor agrees that payment by the State of the amounts referred to in Clauses 4.3(a)(iii) and 4.3(a)(iv) will, as between the State and the D&C Subcontractor, fully discharge the State's Liability to pay such amounts.
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4.4 D&C Subcontractor's right to terminate or suspend without cause

If there is no Default Event subsisting, the D&C Subcontractor may not suspend the performance of the Development Activities in accordance with the D&C Subcontract:

- (a) unless Project Co is entitled to suspend its corresponding obligations in connection with the Development Activities under the Deed; and
- (b) it may not do so without the State's prior consent.

5. Step-in by the State

5.1 Step-in Right

- (a) Upon receipt of a State Cure Notice the State may:
 - (i) if permitted under the State Security, appoint a Receiver over Project Co, any or all of its assets (including the D&C Subcontract), or any or all of the shares in Project Co;
 - (ii) itself enter into possession of any or all of the assets or any or all of the shares in Project Co;
 - (iii) take such other action as it is permitted by Law to undertake in accordance with the terms of the Project Documents; or
 - (iv) by notice to the D&C Subcontractor (**Additional Obligor Step-in Notice**), procure that an Additional Obligor assumes jointly and severally with Project Co all of Project Co's rights and obligations in accordance with the D&C Subcontract.
- (b) Any action taken by the State in accordance with Clause 5.1(a) is an exercise of a "**Step-in Right**" for the purposes of this deed.
- (c) The "**Step-in Period**" is the period commencing on the date on which the D&C Subcontractor receives notice of the exercise of any Step-in Right and ending on the earlier of:
 - (i) the Additional Obligor Step-Out Date if an Additional Obligor Step-in Notice has been given;
 - (ii) the date on which the D&C Subcontractor terminates the D&C Subcontract;
 - (iii) the date of any novation in accordance with Clause 6;
 - (iv) the date which the State has notified the D&C Subcontractor that the State will cease to exercise its Step-in Rights; and
 - (v) any other date on which the State ceases to continue to exercise its Step-in Rights.
- (d) The D&C Parties each agree that the exercise by the State of a Step-in Right will not of itself contravene, or constitute a Default Event in accordance with the D&C Subcontract or entitle a D&C Party to exercise any right (including termination) in accordance with it.

5.2 Step-in by the State

- (a) Without limiting the rights of the Security Trustee under or as permitted by the Finance Direct Deed, the State may at any time after the State has given a notice to the D&C Subcontractor in accordance with Clause 5.1(a), exercise all or any of Project Co's rights and perform all or any of Project Co's obligations in accordance with the D&C Subcontract, as if it were Project Co and to the exclusion of Project Co.
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- (b) Project Co and the D&C Subcontractor agree that, subject to Clause 5.3(b), the State nor any State Associate will have any Liability, nor will Project Co or the D&C Subcontractor be entitled to make, continue or enforce any Claim against the State or State Associate in connection with the D&C Subcontract or this deed by reason only of the State or any State Associate exercising any of Project Co's Powers, or performing any of Project Co's obligations in accordance with the D&C Subcontract (as permitted by the Project Documents) other than, and then only to the extent of, Liability for fraudulent, unlawful, or grossly negligent acts or omissions of the State or any State Associates.

5.3 Step-in by an Additional Obligor

If an Additional Obligor is appointed in accordance with Clause 5.1(a)(iv):

- (a) **(Assumption Date)**: the Additional Obligor will become a party to the D&C Subcontract on the date on which the Additional Obligor Step-in Notice is given to the D&C Subcontractor or such later date as the D&C Subcontractor and the State may agree **(Assumption Date)**;
- (b) **(Rights and obligations of Additional Obligor)**: during the Step-in Period:
- (i) the Additional Obligor will be jointly and severally:
 - (A) entitled with Project Co to exercise the rights, powers and discretions of Project Co in accordance with the D&C Subcontract (excluding any accrued rights of Project Co for any damage, loss, cost, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) **(Project Co's Rights)**; and
 - (B) liable with Project Co for the performance or non-performance of all Project Co's obligations in accordance with the D&C Subcontract arising on or after the Assumption Date except as released in accordance with Clause 5.3(e);
 - (ii) as between Project Co, the D&C Subcontractor and the Additional Obligor, only the Additional Obligor is authorised to deal with the D&C Subcontractor and to exercise Project Co's Rights;
 - (iii) Project Co agrees that it will be legally bound by all the acts and omissions of the Additional Obligor is so dealing with the D&C Subcontractor and in exercising Project Co's Rights;
 - (iv) the Additional Obligor will be bound by any earlier decision, directions, approvals or consents given or made under the D&C Subcontract prior to the Assumption Date;
 - (v) Clause 14 will apply to the D&C Subcontractor and the Additional Obligor as if the address, facsimile number and email address of the Additional Obligor were set out in Clause 14; and
 - (vi) the D&C Subcontractor will owe its obligations in accordance with the D&C Subcontract to Project Co and the Additional Obligor jointly but the performance by the D&C Subcontractor in favour of either Project Co or the Additional Obligor will be a good discharge of the obligations in accordance with the D&C Subcontract;
- (c) **(No Liability)**: the Additional Obligor will have no Liability for remedying any Default Event arising prior to the Assumption Date;
- (d) **(Additional Obligor Step-Out Date)**: the Additional Obligor may at any time give the D&C Subcontractor not less than 30 days notice terminating the Additional Obligor's obligations in accordance with the D&C
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Subcontract (without affecting the continuation of Project Co's obligations or Liabilities towards the D&C Subcontractor in accordance with the D&C Subcontract). Such notice must specify the date on which it takes effect, which must be:

- (i) the date specified in the notice; or
- (ii) if a Novation Notice has been given in accordance with Clause 6.1, the Novation Date;

(Additional Obligor Step-Out Date), and;

- (e) **(Release)**: on and from the Additional Obligor Step-Out Date, between the D&C Subcontractor and the Additional Obligor, each of the Additional Obligor and the D&C Subcontractor will be released from all obligations in accordance with the D&C Subcontract (except for those obligations which have arisen during the Step-in Period including in respect of additional Liabilities incurred by the D&C Subcontractor during the Step-in Period), whether they have fallen due to be performed or have not been performed.

5.4 Indemnity

- (a) Project Co indemnifies the State and the State Associates against any Liability (including any Claim made by or Liability to a third party) the State or any State Associate suffers or incurs in connection with taking any action in accordance with Clauses 5.1, 5.2 or 5.3, except to the extent that such Claim or Liability is caused by any of the events set out in paragraph (a)(i) or (a)(ii) of Clause 38.11 (Limits on Project Co Liability to indemnify and release) of the Deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity under this Clause 5.4.

6. Novation of rights and obligations

6.1 Option

- (a) The State may require a novation of the D&C Subcontract upon the termination of the Deed, by giving a notice (**Novation Notice**) to the D&C Subcontractor and the D&C Subcontractor Guarantor. The Novation Notice must specify the person to whom the State intends to novate the D&C Subcontract whether this be the State, any State Associate or another person (**Substitute Party**).
- (b) If the State issues a Novation Notice then the D&C Subcontractor must comply with this Clause 6 and until the Novation Date the D&C Subcontractor must continue to perform its obligations in accordance with the D&C Subcontract.
- (c) If the D&C Subcontractor has exercised its right to suspend in accordance with Clause 4.3 or 4.4 or, the D&C Subcontractor must recommence performance of the Services from the Novation Date or the date on which the cause of the suspension is remedied (whichever is the earlier).
- (d) The D&C Subcontractor agrees that the giving of a Novation Notice by the State will not of itself contravene, or constitute a Default Event in accordance with the D&C Subcontract or entitle the D&C Subcontractor to exercise any right (including termination) in accordance with it.

6.2 Novation

If the State issues a Novation Notice to the D&C Subcontractor, the parties agree, subject to Clause 6.3, to novate the D&C Subcontract to the Substitute Party

identified in the Novation Notice and must enter into a novation agreement in the form and substance reasonably requested by the State.

6.3 Novation to a Substitute Party other than the State or State Associate

- (a) **(Information to be provided by the State):** If the State gives a Novation Notice to Project Co that states that Project Co must novate the D&C Subcontract to a Substitute Party other than the State or a State Associate, the State must provide the following details in connection with that Substitute Party:
- (i) the name, place of incorporation and identity of the proposed Substitute and its shareholder(s);
 - (ii) if available, its most recent published audited accounts; and
 - (iii) sufficient particulars of the finance available to the Substitute Party to enable the D&C Subcontractor to decide whether to grant its consent to the Substitute Party.
- (b) **(Consent by D&C Subcontractor):** A novation to a Substitute Party other than the State or a State Associate in accordance with this Clause 6.3 will only be effective if the D&C Subcontractor consents to the novation (such consent not to be unreasonably withheld or delayed) or is deemed to have consented in accordance with Clause 6.3(b).
- (c) **(Further information):** The State must (as soon as practicable) supply the D&C Subcontractor with such additional information to that provided in accordance with Clause 6.3(a) as the D&C Subcontractor reasonably requires to enable it to decide whether to grant consent in accordance with Clause 6.3(b) and the D&C Subcontractor must consider such information expeditiously.
- (d) **(Deemed consent):** The D&C Subcontractor's consent to the novation will be deemed to be given if the D&C Subcontractor has not notified the State whether it consents to the novation within 15 Business Days of receipt of the Novation Notice.
- (e) **(Unreasonably withholding consent):** The D&C Subcontractor is not entitled to refuse consent to the novation unless:
- (i) the grounds for refusal are reasonable and are based on:
 - (A) the proposed documentation for the Substitute Party to assume the rights and obligations of Project Co in accordance with the D&C Subcontract not being effective to substitute the Substitute Party for Project Co;
 - (B) the Substitute Party not having the legal capacity, power and authorisation to become a party to and perform the obligations of Project Co in accordance with the D&C Subcontract including any necessary authorisations and consents;
 - (C) the technical competence or financial standing of the Substitute Party being insufficient for it to meet the obligations of Project Co in accordance with the D&C Subcontract; or
 - (D) the D&C Subcontractor being placed in breach of any Laws by the proposed novation and assignment; and
 - (ii) it has notified the State of such reasons.
- (f) **(If D&C Subcontractor withholds consent):** If the D&C Subcontractor withholds its consent to the novation in accordance with this Clause, this will not prejudice the ability of the State to give one or more subsequent
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Novation Notices containing changed particulars relating to the same Substitute Party or particulars relating to another Substitute Party.

6.4 D&C Subcontractor Guarantee

- (a) If the State gives a Novation Notice then, subject to Clause 6.3, from the Novation Date:
- (i) a new deed of guarantee (**New D&C Subcontractor Guarantee**) will be deemed to have been entered into on the same terms as the D&C Subcontractor Guarantee, in respect of the Project except that:
 - (A) Project Co will not be a party to the New D&C Subcontractor Guarantee; and
 - (B) the Substitute Party will be named as beneficiary to the New D&C Subcontractor Guarantee in substitution for Project Co; and
 - (ii) the D&C Subcontractor Guarantor will guarantee for the benefit of the Substitute Party all of the obligations of the D&C Subcontractor in accordance with the New D&C Subcontractor Guarantee.
- (b) As soon as reasonably practicable after the Novation Date, the D&C Subcontractor Guarantor must document and execute the New D&C Subcontractor Guarantee on the terms described in Clause 6.4(a).
- (c) If the Novation Notice referred to in Clause 6.4(a) requires the novation of the D&C Subcontractor Guarantee to a Substitute Party other than the State or a State Associate, then the D&C Subcontractor and the D&C Subcontractor Guarantor must enter into a side deed with the State and the Substitute Party (which is not the State) on substantially the same terms as this deed.

6.5 Accrued obligations and liabilities

Clause 6.2 does not operate to:

- (a) (**State to assume obligations or Liabilities**): require the State to assume any obligations or Liabilities arising from, or which are required to be performed in connection with the D&C Documents prior to the date of the Novation Notice unless expressly required to do so in clause 6.2; or
- (b) (**release Project Co**): release Project Co from such obligations or Liabilities unless expressly required to do so in clause 6.2.

7. Amendments to D&C Subcontract and D&C Subcontractor Guarantee

The D&C Subcontractor and the D&C Subcontractor Guarantor each agree with the State that it will not rescind (unless permitted in accordance with this deed), grant or accept any waiver or discharge of the D&C Subcontract or the D&C Subcontractor Guarantee (as applicable), or agree to or permit any variation, waiver or amendment to the terms of the D&C Subcontract or the D&C Subcontractor Guarantee (as applicable) without the prior written consent of the State.

8. Restriction on dealings

The D&C Subcontractor agrees with the State that it will not assign, novate, grant an Encumbrance over or otherwise deal with its interest in the D&C Subcontract without the prior written consent of the State and without procuring that such transferee,

assignee, mortgagee, novatee, chargee, encumbrancee or the secured party enters into a deed in which it agrees to be bound by the terms of this deed.

9. Confidentiality

9.1 Confidential Information

- (a) **(Confidentiality obligations):** The D&C Subcontractor and the D&C Subcontractor Guarantor must ensure that the D&C Subcontractor's Associates, keeps confidential, subject to Clauses 9.1(b) and 9.1(c), the Confidential Information.
- (b) **(Permitted disclosure):** The D&C Subcontractor and D&C Subcontractor Guarantor are not obliged to keep confidential any information:
 - (i) which is in the public domain through no default of any party or the D&C Subcontractor's Associates; 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; or
 - (D) made to a court in the course of proceedings to which the disclosing person is a party.
- (c) **(Disclosure to D&C Subcontractor's Associates):** Without limiting the D&C Subcontractor's and the D&C Subcontractor Guarantor's obligations under Clause 9.1(a) and provided that the D&C Subcontractor and the D&C Subcontractor's Guarantor ensure that the D&C Subcontractor's Associates comply with the obligations under Clause 9.1(a), the D&C Subcontractor and the D&C Subcontractor Guarantor may disclose Confidential Information to the D&C Subcontractor's Associates to the extent necessary for the purpose of undertaking the Project.
- (d) **(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 website.

9.2 Public announcements

- (a) The D&C Subcontractor and the D&C Subcontractor Guarantor must not and must ensure that the D&C Subcontractor's Associates do not, without the prior approval of the State:
 - (i) use this deed or the name or logo of any person specified in this deed, the State of Western Australia or any other Government Agency;
 - (ii) refer to the D&C Subcontractor's, the D&C Subcontractor Guarantor's or any D&C Subcontractor's Associate's association with the State or any Government Agency which results from this deed; or
 - (iii) make any statement concerning this deed or the Project, in any publication, public statement or announcement, advertisement or media release.
 - (b) Subject to Clause 9.1, the State may use this deed and the D&C Subcontractor's name and logo in connection with this deed as the State
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reasonably requires, provided that the State acknowledges the role of the D&C Subcontractor to the extent that is reasonable in the circumstances.

9.3 Media releases

The D&C Subcontractor and the D&C Subcontractor Guarantor must, and must ensure that the D&C Subcontractor's Associates:

- (a) obtain the State's prior written consent (which may be granted, refused or conditioned at the sole discretion of the State) to:
 - (i) issue any information, document or article in connection with this deed for publication in any media; or
 - (ii) nominate this deed for any award;
- (b) give due recognition to the State and any State Associates where the State consents to a matter specified in 9.3(a); and
- (c) refer all enquiries from any media concerning this deed to the State, and thereafter, as soon as practicable provide to the State details of all enquiries, and any material or information released by the D&C Subcontractor, the D&C Subcontractor Guarantor or a D&C Subcontractor's Associate following the State's consent.

9.4 No Association

The D&C Subcontractor and the D&C Subcontractor Guarantor must not, and must ensure that the D&C Subcontractor's Associates do not:

- (a) use the State's name nor the name of any State Associate, nor the State's logo, nor attempt to obtain a benefit from the image or reputation of the State or any of the State Associates in any way; or
- (b) hold out to any third party that the D&C Subcontractor, the D&C Subcontractor Guarantor or any D&C Subcontractor's Associate has an association or connection with the State or any State Associates other than the D&C Subcontractor's or D&C Subcontractor Guarantor's engagement under this deed,

without obtaining the State's prior written consent (which may be granted or refused at the sole discretion of the State).

9.5 Confidentiality under PPSA

The parties intend that, by operation of Clause 9.1, this deed is a confidentiality agreement (within the meaning of Section 275(5) of the PPSA) and the parties agree that any request for disclosure of this deed made under Section 275 of the PPSA must be treated accordingly.

10. Acknowledgment, release and indemnity

10.1 No Liability

Each of Project Co and the D&C Subcontractor agree that:

- (a) subject to the Deed, Clauses 5 and 6, the State will have no Liability to Project Co or the D&C Subcontractor in connection with the exercise by the State of its rights in accordance with this deed except if:
 - (i) the State has acted fraudulently or unlawfully; or
 - (ii) in the course of exercising its rights in accordance with this deed, the State has acted with gross negligence; and

- (b) the exercise (or non-exercise) by the State of its rights in accordance with this deed will not limit any other right of the State, whether in accordance with this deed or otherwise.

10.2 Release and indemnity

Each of Project Co and the D&C Subcontractor:

- (a) releases the State and any party acting for or on behalf of the State (including any Additional Obligor) from any Liability in connection with the exercise by the State of its rights in accordance with this deed; and
- (b) indemnifies the State and any party acting for or on behalf of the State (including any Additional Obligor) against any Liability to any person in connection with the exercise by the State of its rights in accordance with this deed, except to the extent that such Claim or Liability is caused by any of the events set out in paragraph (a)(i) or (a)(ii) of Clause 38.11 (Limits on Project Co Liability to indemnify and release) of the Deed.

11. Dispute resolution

If a matter is referred for determination in accordance with this Clause 11:

- (a) 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 are resolved when referred for expert determination under the Deed; and
- (b) the provisions of Clause 43 (Dispute Resolution procedure) of the Deed are incorporated into this deed but as if the only persons party to the Deed, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (c) the only matters for expert determination in accordance with those provisions are the matters referred for expert determination in accordance this deed.

12. Insurance

- (a) **(Insurances):** Notwithstanding anything else, the D&C Subcontractor will:
 - (i) take out all insurances as are required in accordance with the D&C Subcontract; and
 - (ii) otherwise comply with all of its obligations in relation to insurance in the D&C Subcontract.
 - (b) **(Prejudiced):** Project Co and the D&C Subcontractor must ensure that it does not do or omit to do anything and does not permit anything to be done or omitted to be done whereby any insurance policy may be prejudiced.
 - (c) **(Void or voidable):** If any default is made by the D&C Subcontractor in effecting or maintaining such insurance policy or if any such insurance policy becomes void or voidable, the State may (but is not obliged to) effect or maintain that insurance policy at the cost of the D&C Subcontractor or, failing it, Project Co.
 - (d) **(State covered by insurance):** If required by the Deed, on any insurance contract entered into by the D&C Subcontractor in accordance with Clause 12(a), the D&C Subcontractor will ensure, to the extent permitted by Law, that the State is specified as a person to whom the insurance cover provided by that contract extends.
 - (e) **(Documents, evidence and information):** Project Co and the D&C Subcontractor will do all things necessary and provide all documents,
-

evidence and information necessary to enable the State to collect or recover any moneys due or to become due in connection with any insurance policy at the cost of the D&C Subcontractor or, failing it, Project Co.

- (f) **(State's consent)**: Without prejudice to the above requirements, neither Project Co nor the D&C Subcontractor will cause or take any steps to bring about the cancellation, lapse, material change, reduction or any rescinding of any such insurance policy unless it has first obtained the written consent of the State after giving 60 days prior written notice to the State.
- (g) **(Notify the State)**: Project Co and the D&C Subcontractor will immediately notify the State of any cancellation, lapse, material change, reduction, or any rescinding of any such insurance policy, and of the occurrence of any event giving rise to any claim in accordance with any such insurance policy in connection with the Project.
- (h) **(Severable)**: The obligations of Project Co and the D&C Subcontractor in this Clause 12 are severable unless specified otherwise in the Deed.

13. GST

- (a) **(Amount payable)**: Notwithstanding any other provision of this deed, any amount payable for a supply made under or in connection with this deed which is calculated by reference to a cost, expense or other amount paid or incurred by a party will be reduced by an amount equal to any Input Tax Credits which that party is entitled to in connection with that cost, expense or other amount.
- (b) **(GST payable by Supplier)**: If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this deed:
 - (i) any amount payable or consideration to be provided in accordance with any other provision of this deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (ii) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (iii) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided under this deed. The Recipient is not obliged to pay any amount in accordance with this Clause 13(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable)**: If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under Clause 13(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply, and except where the Recipient is required to issue an adjustment note:

- (i) the Supplier will issue an adjustment note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (ii) no additional amount will be payable by the Recipient unless and until an adjustment note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with Clause 13(b) or 13(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(Revenue net of GST):** Any reference in this deed or any Project Document to price, value, sales, revenue, profit or a similar amount (**Revenue**), is 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 deed or any Project Document to cost, expense, liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (g) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this deed, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this deed.
- (h) **(GST Groups):** For the purposes of this deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member.

14. Notices

All communications (including approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands) in connection with this deed:

- (a) **(in writing):** must be in writing;
- (b) **(addressed):** must be addressed as set out below;

To the State

Address	[Not disclosed]
Attention	[Not disclosed]
Telephone	[Not disclosed]
Email	[Not disclosed]

To Project Co

EduWest Project Co Pty Ltd in its personal capacity and in its capacity as trustee of the EduWest Project Trust

Address	[Not disclosed]
Attention	[Not disclosed]

Fascimile	[Not disclosed]
Telephone	[Not disclosed]
Email	[Not disclosed]

To D&C Subcontractor

Name	Perkins (WA) Pty Ltd (ACN 008 844 862) and Badge Constructions (WA) Pty Ltd (ACN 099 721 089)
Address	[Not disclosed]
Email	[Not disclosed]
Telephone	[Not disclosed]

To D&C Subcontractor Guarantor(s)

Name	[Not disclosed]
Address	[Not disclosed]
Attention	[Not disclosed]
Fascimile	[Not disclosed]
Telephone	[Not disclosed]
Email	[Not disclosed]

Name	[Not disclosed]
Address	[Not disclosed]
Attention	[Not disclosed]
Fascimile	[Not disclosed]
Telephone	[Not disclosed]
Email	[Not disclosed]

Name	[Not disclosed]
Address	[Not disclosed]
Attention	[Not disclosed]
Fascimile	[Not disclosed]
Telephone	[Not disclosed]
Email	[Not disclosed]

Name	[Not disclosed]
Address	[Not disclosed]
Attention	[Not disclosed]
Fascimile	[Not disclosed]
Email	[Not disclosed]

Name	[Not disclosed]
------	-----------------

Address [Not disclosed]
Attention [Not disclosed]
Fascimile [Not disclosed]
Email [Not disclosed]

Name [Not disclosed]
Address [Not disclosed]
Attention [Not disclosed]
Fascimile [Not disclosed]
Email [Not disclosed]

Name [Not disclosed]
Address [Not disclosed]
Attention [Not disclosed]
Fascimile [Not disclosed]
Email [Not disclosed]

Name [Not disclosed]
Address [Not disclosed]
Attention [Not disclosed]
Fascimile [Not disclosed]
Email [Not disclosed]

Name [Not disclosed]
Address [Not disclosed]
Attention [Not disclosed]
Fascimile [Not disclosed]
Email [Not disclosed]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out below; and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out below:
- (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
-

- (ii) 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; and
- (iii) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,
- (iv) unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.
- (v) the D&C Subcontractor and the D&C Subcontractor Guarantor must ensure that, in connection with any communications in accordance with or in connection with this deed:
 - (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.

15. Privacy

- (a) **(Australian Privacy Principles):** Without limiting any obligations in respect of privacy set out in the Output Specification, the D&C Parties agree to, and will ensure that the D&C Subcontract and any other Subcontract entered into by it contains terms which require it or the relevant Subcontractor to, be bound by the Australian Privacy Principles and any applicable Australian Privacy Principles Code with respect to any act done, or practice engaged in, by it in connection with this deed or for the D&C Subcontract or other Subcontract (as the case may be), in the same way as the State would be bound by the Australian Privacy Principles and any applicable Australian Privacy Principles Code, in connection with that act or practice had it been directly done or engaged in by the State.
 - (b) **(Indemnity):** The D&C Parties must release, indemnify and must keep indemnified on demand the State and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third
-

party) which the State or any of its Associates suffer or incur resulting from any act done or practice engaged in by the D&C Parties or any Subcontractor in connection with this deed or the D&C Subcontract or other Subcontract (as the case may be), which would, had that act or practice been done or engaged in by the State, have contravened one or more of the Australian Privacy Principles or any applicable Australian Privacy Principles Code.

16. Return of documents

The D&C Subcontractor must return a copy of all plans, drawings, specifications and other documents which come into its possession for the purpose of the D&C Subcontract or this deed to the State at the expiration of the D&C Subcontract.

17. General

17.1 Interest

- (a) **(Interest):** If a party fails to pay any amount payable by that party to the other party within the time required under this deed, then it must pay interest on that amount:
- (i) from the date on which payment was due and payable until the date on which payment is made;
 - (ii) calculated on daily balances at the Default Rate; and
 - (iii) capitalised monthly.
- (b) **(Sole entitlement):** The amount specified in this Clause 17.1 will be a party's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

17.2 Set-off

- (a) Without limiting or otherwise affecting the State's rights in accordance with any other provision of this deed or at Law, the State may deduct from any monies due and payable to the D&C Subcontractor in accordance with this deed:
- (i) any amount due and payable by the D&C Subcontractor to the State (whether in accordance with or relating to this deed or any other State Project Documents); or
 - (ii) any amount claimed by the State against the D&C Subcontractor (acting reasonably) arising out of or in connection with any State Project Document and in good faith.
- (b) The D&C Subcontractor must make all payments to the State free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless the D&C Subcontractor is compelled by Law to make such a deduction or withholding.
- (c) If the D&C Subcontractor is compelled by Law to make a deduction or withholding, it must:
- (i) remit the deducted or withheld amount to the relevant Authority within the time required by Law; and
 - (ii) provide to the State all information and documentation relating to that deduction or withholding, including any information or documentation required to obtain a credit for or repayment of the deducted or withheld amount from an Authority.
-

17.3 Relationship of parties

- (a) Nothing in this deed:
 - (i) **(no additional relationship)**: creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
 - (ii) **(no duty of good faith)**: imposes any duty of good faith on the State (unless otherwise expressly provided);
- (b) Project Co, the D&C Subcontractor and the D&C Subcontractor Guarantor must not act as or represent itself to be the servant or agent of the State.

17.4 State's rights, duties, powers and functions

- (a) **(State's own interests)**: Unless otherwise expressly provided for in this deed otherwise, nothing in this deed 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 this deed.
- (b) **(State's powers, functions or duties)**: Notwithstanding anything expressly provided or implied in this deed to the contrary, the parties expressly agree that the State:
 - (i) is not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other government party in the proper exercise and performance of any of its executive or statutory rights or duties; and
 - (ii) nothing expressly provided or implied in this deed 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 executive or statutory rights or duties.
- (c) **(No Claim)**: Subject to Clause 17.4(a) Project Co, the D&C Subcontractor and the D&C Subcontractor's Guarantor will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its statutory rights or powers.
- (d) **(Liability for breach)**: Clauses 17.4(a) to 17.4(d) do not limit any Liability which the State would have had to any party in accordance with this deed as a result of a breach by the State of a term of this deed but for Clauses 17.4(a) to 17.4(d).

17.5 Entire agreement

To the extent permitted by Law and in relation to their subject matter, this deed:

- (a) **(entire understanding)**: embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior agreement of the parties.

17.6 Counterparts

This deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same deed.

17.7 Governing law and jurisdiction

- (a) **(Governing Law)**: This deed is governed by, and must be construed according to, the Laws of Western Australia, Australia.
-

- (b) (**Jurisdiction**): Without limiting Clause 11 each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this deed.

17.8 Waiver

- (a) (**Writing**): A waiver given by a party under this deed is only effective and binding on that party if it is given or confirmed by that party.
- (b) (**No waiver**): A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this deed.
- (c) (**No waiver of another breach**): No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

17.9 Amendments to this deed

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

17.10 Joint and several Liability

- (a) If Project Co consists of more than one person, then the rights and obligations of Project Co in accordance with this deed are joint and several as between those persons.
- (b) If the D&C Subcontractor consists of more than one person, then the rights and obligations of the D&C Subcontractor in accordance with this deed are joint and several as between those persons.

17.11 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination or expiration of this deed.
- (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 deed.
- (c) A party must pay on demand any amount it must pay in accordance with an indemnity in this deed.
- (d) The State, the D&C Subcontractor and Project Co agree that:
- (i) each indemnity or promise referred to in this deed 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 Clause 17.11(d)(i) will not be required for any amendment to, or waiver of rights in accordance with this deed.

17.12 Survival of certain provisions

- (a) (**Surviving clauses**): All provisions of this deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this deed will survive the rescission, termination or expiration of this deed, including any provision in connection with:
- (i) the State's rights to set-off and recover money;

- (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to the State;
 - (v) any indemnity or financial security given under this deed;
 - (vi) any limitation on liability; and
 - (vii) any right or obligation arising on termination of this deed.
- (b) **(Interpretation):** No provision of this deed which is expressed to survive the termination of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

17.13 Expenses

Except as otherwise expressly provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

17.14 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by any Approval, Law or reasonably requested by another party to give effect to this deed.

17.15 Severance

If, at any time, a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this deed; or
- (b) that provision under the Law of any other jurisdiction.

17.16 Proportionate Liability

- (a) **(Excluded operation of Part 1F of the Civil Liability Act):** The operation of Part 1F (Proportionate liability) of the *Civil Liability Act 2002* (WA) is excluded in relation to all and any rights of either party under this deed whether such rights are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights):** Without limiting Clause 17.16(a), the rights of the parties (including those relating to proportionate liability) are as specified in this deed and not otherwise.

18. Aggregate Liability Cap

- (a) Despite any other provision of the D&C Subcontract or this deed, the D&C Subcontractor's aggregate liability to the State and Project Co whether in Contract (including under an indemnity), tort (including negligence) or equity, under statute or otherwise, arising out or in connection with the subject matter of the D&C Subcontract or this deed (**Aggregate Liability**) will be no greater than the D&C Subcontractor's aggregate liability to Project Co under the D&C Subcontract.
-

- (b) If there is a breach of the D&C Subcontract by the D&C Subcontractor, payment by it on its behalf to Project Co or the State (as the case may be) of an amount in respect of its Liability for that breach must also satisfy any Claim by the State or Project Co (as the case may be) against the D&C Subcontractor in respect of the same breach to the extent that such Claim is in respect of the same loss.
-

Execution page

Executed as a deed.

Executed by THE HONOURABLE DR MIKE NAHAN MLA Treasurer for the time being, on behalf of the State of Western Australia, and as delegate of the Minister for Works pursuant to section 5A of the *Public Works Act 1902* (WA), in the presence of:

Signature of Witness

The Hon. Dr Mike Nahan MLA

Witness name

Witness address

Witness occupation

THE COMMON SEAL of the MINISTER FOR
EDUCATION was hereunto affixed in the
presence of THE HON PETER CHARLES
COLLIER MLC Minister for Education for the time
being,
in the presence of:

Signature of Witness

Hon Peter Charles Collier MLC

Witness name

Witness address

Witness occupation

Signed, sealed and delivered for and)
 on behalf of **EduWest Project Co Pty**)
Ltd (ACN 608 027 434) in its personal)
 capacity and as trustee for the)
 EduWest Project Trust by its attorneys)
 pursuant to power of attorney dated 18)
 September 2015 who each state that)
 no notice of revocation of the power of)
 attorney has been received in the)
 presence of:

.....
 Witness

.....
 Attorney

.....
 Name of Witness (print)

.....
 Name of Attorney (print)

.....
 Witness

.....
 Attorney

.....
 Name of Witness (print)

.....
 Name of Attorney (print)

Signed, sealed and delivered for and)
on behalf of **Badge Constructions**)
(WA) Pty Ltd (ACN 099 721 089) by its)
attorney [*Not disclosed*] pursuant to)
power of attorney dated 11 September)
2015 who states that no notice of)
revocation of the power of attorney has)
been received in the presence of:)

.....
Witness

.....
Attorney

.....
Name of Witness (print)

Executed by Perkins (WA) Pty Ltd)
(ACN 008 844 862) pursuant to section)
127 of the *Corporations Act 2001* (Cth)

.....
Sole Director and Sole Company
Secretary

.....
Name of Sole Director and Sole
Company Secretary (print)

Executed by [**Not disclosed**] pursuant)
to section 127 of the *Corporations Act*)
2001 (Cth)

.....
Sole Director and Sole Company
Secretary

.....
Name of Sole Director and Sole
Company Secretary (print)

Executed by [**Not disclosed**] pursuant)
to section 127 of the *Corporations Act*)
2001 (Cth)

.....
Sole Director and Sole Company
Secretary

.....
Name of Sole Director and Sole
Company Secretary (print)

Signed sealed and delivered)
by [**Not disclosed**] in the presence of:)
)

.....

.....
Witness

.....
Name of Witness (print)

Signed, sealed and delivered for and)
on behalf of **[Not disclosed]** by its)
attorney *[Not disclosed]* pursuant to)
power of attorney dated 11 September)
2015 who states that no notice of)
revocation of the power of attorney has)
been received in the presence of:)
)

.....
Witness

.....
Attorney

.....
Name of Witness (print)

Signed, sealed and delivered for and)
on behalf of **[Not disclosed]** by its)
attorney *[Not disclosed]* pursuant to)
power of attorney dated 11 September)
2015 who states that no notice of)
revocation of the power of attorney has)
been received in the presence of:)
)

.....
Witness

.....
Attorney

.....
Name of Witness (print)

Signed, sealed and delivered for and)
on behalf of **[Not disclosed]** by its)
attorney *[Not disclosed]* pursuant to)
power of attorney dated 11 September)
2015 who states that no notice of)
revocation of the power of attorney has)
been received in the presence of:)
)

.....
Witness

.....
Attorney

.....
Name of Witness (print)

Signed, sealed and delivered for and)
on behalf of **[Not disclosed]** by its)
attorney *[Not disclosed]* pursuant to)
power of attorney dated 11 September)
2015 who states that no notice of)
revocation of the power of attorney has)
been received in the presence of:)
)

.....
Witness

.....
Attorney

.....
Name of Witness (print)

Signed, sealed and delivered for and)
on behalf of **[Not disclosed]** by its)
attorney *[Not disclosed]* pursuant to)
power of attorney dated 11 September)
2015 who states that no notice of)
revocation of the power of attorney has)
been received in the presence of:)
)

.....
Witness

.....
Attorney

.....
Name of Witness (print)

Signed sealed and delivered for and)
on behalf of **[Not disclosed]** by his)
attorney *[Not disclosed]* pursuant to)
enduring power of attorney dated 3)
September 2015 who states that no)
notice of revocation of the power of)
attorney has been received in the)
presence of:

.....
Witness

.....
Attorney

.....
Name of Witness (print)

Schedule 1 – D&C Subcontractor Statements

1 CONTENTS OF D&C SUBCONTRACTOR STATEMENT

All Default Event Notices must include the following information in connection with the Default Event:

- (a) all amounts due and payable to the D&C Subcontractor in accordance with the D&C Subcontract on or before the date of the Default Event Notice but remaining unpaid at such date;
- (b) the nature and, to the best of the D&C Subcontractor's knowledge and belief, the amount of any monetary claim asserted by the D&C Subcontractor in connection with the D&C Subcontract against Project Co; and
- (c) if the D&C Subcontractor intends to terminate the D&C Subcontract due to a default or breach of condition of a non-financial nature or intends to claim damages or to seek some other form of relief:
 - (i) the provisions of the D&C Subcontract alleged to have been breached or not fulfilled;
 - (ii) sufficient information to enable the State to identify the material facts;
 - (iii) the steps reasonably required to remedy the Default Event (if reasonably capable of remedy);
 - (iv) the time within which the specified steps can reasonably be expected to be taken;
 - (v) the amount of damages claimed and the manner in which they have been calculated; and
 - (vi) any other relief to be sought.

2 WARRANTY OF ACCURACY

The D&C Subcontractor warrants to the State that each D&C Subcontractor Statement will be true, complete and accurate statements of the amounts to which the D&C Subcontractor considers itself entitled.

3 VERIFICATION OF D&C SUBCONTRACTOR STATEMENTS

The State may appoint a firm of independent chartered accountants or a firm of technical advisers to verify (at Project Co's cost) the D&C Subcontractor Statements, and the D&C Subcontractor must, subject to such firm(s) executing a deed or poll or confidentiality undertaking providing for confidentiality on terms that are in substance that same as those included in Clause 9, permit such firm(s) to have access to and to make copies of all records, documents, data and accounting and other information not subject to legal (including solicitor and own client) professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such D&C Subcontractor Statements.

4 D&C SUBCONTRACTOR STATEMENTS TO BE CONCLUSIVE EVIDENCE

- (a) Each of the State, Additional Obligor or Receiver (**Statement Beneficiary**) is entitled to rely on the D&C Subcontractor Statements for the purpose of determining the extent of the matters occurring prior to a Default Event which are required to be remedied and the requirements to effect the remedy of that Default Event by a Statement Beneficiary.
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- (b) The D&C Subcontractor Statements will be conclusive evidence in favour of any Statement Beneficiary that the D&C Subcontractor has waived and abandoned all claims then known or which ought reasonably to have been known to the D&C Subcontractor in connection with the D&C Subcontract prior to the date of the Default Event Notice.
- (c) Paragraphs (b) and (c) are without prejudice to the rights of the D&C Subcontractor to pursue any claims against Project Co following the end of the Step-in Period.
- (d) A D&C Subcontractor Statement will not prevent any Statement Beneficiary from disputing the amount of any claim by the D&C Subcontractor or the existence of any default by Project Co in accordance with the D&C Subcontract. In the case of any such dispute:
- (i) the relevant Statement Beneficiary must pay the amount (if any) not in dispute;
 - (ii) the dispute must be referred to expert determination in accordance with Clause 11 of the D&C Direct Deed;
 - (iii) upon resolution of the Dispute, the parties must make payments as determined by the expert; and
 - (iv) during the period of Dispute resolution, all parties must continue to perform their obligations in accordance with this deed.
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Schedule 2 – D&C Subcontractor Guarantor

1	<i>[Not disclosed]</i>
2	<i>[Not disclosed]</i>
3	<i>[Not disclosed]</i>
4	<i>[Not disclosed]</i>
5	<i>[Not disclosed]</i>
6	<i>[Not disclosed]</i>
7	<i>[Not disclosed]</i>
8	<i>[Not disclosed]</i>
9	<i>[Not disclosed]</i>