

CONFORMED VERSION AS AT 4 MARCH 2013

Intercreditor Deed

Healthscope Hospitals Holdings Pty Limited (formerly APHG Holdings 1 Pty Limited and Fallen Echo Pty Limited) ACN 144 840 639 (as **Holdco I**)
Healthscope Pathology Holdings Pty Limited (formerly APHG No.2 Holdings 1 Pty Limited) ACN 145 250 157 (as **Holdco 1a**)
Each party listed in Schedule 2 (as **Initial Obligors**)
Each party listed in Schedule 3 (as **Initial Senior Creditors**)
Westpac Banking Corporation ABN 33 007 457 141 (as **Senior Agent**)
Westpac Banking Corporation ABN 33 007 457 141 (as **Security Trustee**)
Each party listed in Schedule 4 (as **Initial Subordinated Creditors**)
Healthscope Hospitals Holdings Pty Limited (formerly APHG Holdings 1 Pty Limited and Fallen Echo Pty Limited) ACN 144 840 639 (as **Subordinated Agent**)

22 September 2010

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Parties

- 1 **Healthscope Hospitals Holdings Pty Limited** (formerly APHG Holdings 1 Pty Limited and Fallen Echo Pty Limited) **ACN 144 840 639** of Level 43, 101 Collins Street, Melbourne VIC 3000 (**Holdco I**)
 - 2 **Healthscope Pathology Holdings Pty Limited** (formerly APHG No.2 Holdings 1 Pty Limited) **ACN 145 250 157** of Level 43, 101 Collins Street, Melbourne VIC 3000 (**Holdco 1a**)
 - 3 **Each party listed in Schedule 2** (each, an **Initial Obligor**)
 - 4 **Each party listed in Schedule 3** (each, an **Initial Senior Creditor**)
 - 5 **Westpac Banking Corporation ABN 33 007 457 141** of Level 3, Westpac Place, 275 Kent Street, Sydney NSW 2000 (**Senior Agent**)
 - 6 **Westpac Banking Corporation ABN 33 007 457 141** of Level 3, Westpac Place, 275 Kent Street, Sydney NSW 2000 (**Security Trustee**)
 - 7 **Each party listed in Schedule 4** (each, an **Initial Subordinated Creditor**)
 - 8 **Healthscope Hospitals Holdings Pty Limited** (formerly APHG Holdings 1 Pty Limited and Fallen Echo Pty Limited) **ACN 144 840 639** of Level 43, 101 Collins Street, Melbourne VIC 3000 (**Subordinated Agent**)
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Background

- A The Senior Creditors have made, or will make, available to the Senior Borrowers the Senior Debt.
- B The Subordinated Creditors have made, or will make, available to the Subordinated Borrower the Subordinated Debt.
- C Holdco I has made, or will make, available to Holdco II the Holdco II Shareholder Debt.
- D Holdco 1a has made, or will make, available to Holdco 2a the Holdco 2a Shareholder Debt.
- E The Subordinated Creditors and the Obligors which are party to this deed have agreed that the Subordinated Debt will be subordinated to, and rank in priority behind, the Senior Debt on the terms and conditions of this deed.
- F Holdco I, Holdco 1a and the Obligors which are party to this deed have agreed that the Shareholder Debt will be subordinated to, and rank in priority behind, the Secured Moneys on the terms and conditions of this deed.

The parties agree

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter which is defined in the Dictionary in Schedule 1 (*Dictionary*) has the meaning given to it in the Dictionary.

1.2 Interpretation

The interpretation clause in Schedule 1 (*Dictionary*) sets out rules of interpretation for this deed.

1.3 Security Trustee's limitation of liability protection

(a) Limitation of liability:

- (i) The Security Trustee enters into this deed only in its capacity as security trustee of the Security Trust and in no other capacity.
- (ii) A liability arising under or in connection with this deed (whether that liability arises under a specific provision of this deed, for breach of contract or otherwise) can be enforced against the Security Trustee only to the extent to which it can be satisfied out of property of the Security Trust out of which the Security Trustee is actually indemnified for the liability.
- (iii) The limitation of the Security Trustee's liability under this clause 1.3(a) (*Security Trustee's limitation of liability protection*) applies despite any other provision of this deed (other than clause 1.3(c) (*Security Trustee's limitation of liability protection*)) and extends to all liabilities and obligations of the Security Trustee in relation to any representation, warranty, conduct, omission, agreement or transaction related to this deed.

(b) No action against the Security Trustee personally: The parties may not:

- (i) have recourse to the Security Trustee beyond that for which the Security Trustee is indemnified as contemplated by clause 1.3(a)(ii) (*Security Trustee's limitation of liability protection*);
- (ii) seek the appointment of a liquidator, administrator, receiver or similar person to the Security Trustee; or
- (iii) prove in any liquidation, administration or arrangement of or affecting the Security Trustee.

(c) Exception: The provisions of this clause 1.3 (*Security Trustee's limitation of liability protection*) will not apply to any obligation or liability of the Security Trustee to the extent that it is not satisfied because there is a reduction in the extent, or an extinguishment, of the Security Trustee's indemnification out of the assets of the Security Trust, as a result of the Security Trustee's fraud, gross negligence or wilful misconduct.

1.4 Capacity of Senior Representative

- (a) Each Representative of a Senior Creditor enters into this deed as agent for that Senior Creditor.
- (b) Each Senior Creditor from time to time is bound by this deed as a principal.
- (c) The obligations and liabilities of a Representative under or in connection with this deed are limited and protected to the extent set out in the Senior Finance Document under which it is appointed.

1.5 Dealings with Senior Representative

- (a) Unless expressly provided otherwise in a Senior Finance Document, all dealings and correspondence with a Senior Creditor will be conducted through that Senior Creditor's Representative.

- (b) A party may rely on any instructions given by a Representative as being given on behalf of the Senior Creditors for which it is a representative. It need not enquire whether any requirements under the Senior Finance Documents setting out the terms of its appointment have been complied with.
- (c) Any payment to be made by a party to a Senior Creditor may be made as directed by that Senior Creditor's Representative.
- (d) Any notice, circular, communication, report or document required to be given by a party to a Senior Creditor may instead be given to that Senior Creditor's Representative for its benefit.

1.6 Capacity of Subordinated Representative

- (a) Subject to clause 1.6(b) (*Capacity of Subordinated Representative*):
 - (i) each Representative for a Subordinated Creditor enters into this deed as agent for that Subordinated Creditor;
 - (ii) each Subordinated Creditor from time to time is bound by this deed as a principal;
 - (iii) the obligations and liabilities of a Representative under or in connection with this deed are limited and protected to the extent set out in the Subordinated Finance Document under which it is appointed.
- (b) Nothing in this clause 1.6 (*Capacity of Subordinated Representative*) applies to any Subordinated Note Trustee or the Subordinated Noteholders.

1.7 Dealings with Subordinated Representative

- (a) Unless expressly provided otherwise in a Subordinated Finance Document, all dealings and correspondence with a Subordinated Creditor will be conducted through its Representative.
- (b) A party may rely on any instructions given by a Representative as being given on behalf of the Subordinated Creditors of which it is a representative. It need not enquire whether any requirements under the Subordinated Finance Documents setting out the terms of its appointment have been complied with.
- (c) Any payment to be made by a party to a Subordinated Creditor may be made as directed by that Subordinated Creditor's Representative.
- (d) Any notice, circular, communication, report or document required to be given by a party to a Subordinated Creditor may instead be given to that Subordinated Creditor's Representative for its benefit.

1.8 Security Beneficiaries' obligations

The obligations of the Security Beneficiaries under this deed are several and:

- (a) failure of a Security Beneficiary to carry out its obligations does not relieve any other Security Beneficiary of its obligations;
- (b) no Security Beneficiary is responsible for the obligations of any other Security Beneficiary; and
- (c) subject to the Finance Documents, each Security Beneficiary may separately enforce its rights under any Finance Document.

1.9 Security Interest

Nothing in this deed creates a Security Interest over any asset of a Security Beneficiary, any Obligor, Holdco I, Holdco 1a or any other party.

1.10 Inconsistency

This deed prevails over the other Finance Documents to the extent of any inconsistency (in the sense that it is impossible to comply with both) unless otherwise expressly provided in this deed.

1.11 Compliance Certificate

- (a) A reference in this deed to **Compliance Certificate** means a “Compliance Certificate” as defined in the Senior Facility Agreement or, if the Senior Facility Agreement has terminated, a “Compliance Certificate” as defined in any Senior Finance Documents.
- (b) The Obligors must:
 - (i) send each Representative for the Senior Creditors a copy of any “Compliance Certificate” (as defined in a Subordinated Finance Document) at the same time as it is sent to any Representative for the Subordinated Creditors;
 - (ii) send each Representative for the Subordinated Creditors a copy of any “Compliance Certificate” (as defined in a Senior Finance Document) at the same time as it is sent to any Representative for the Senior Creditors.
- (c) Each Security Beneficiary consents to the Obligors complying with clause 1.11(b) (*Compliance Certificate*).

1.12 Representatives

A Representative of a Subordinated Creditor will only be taken to be aware of a Representative of a Senior Creditor if that Representative for the Senior Creditor is:

- (a) a party to this deed or the Security Trust Deed in that capacity; and
- (b) the Security Trustee has notified the relevant Representative for the Subordinated Creditor of the name and notice details of that Representative for the Senior Creditor (which the Security Trustee agrees it will do as soon as reasonably practicable after such person has become a representative).

1.13 Subordinated Note Trustees’ capacity

- (a) Each Subordinated Note Trustee which enters into this deed by accession does so in its capacity as trustee of the relevant Subordinated Note Trust and on behalf of each Subordinated Noteholder who is beneficiary of that Subordinated Note Trust.
- (b) The rights and obligations of each Subordinated Note Trustee under this deed are the rights and obligations of the Subordinated Noteholders for whom it is trustee, provided that:
 - (i) those rights may only be exercised by that Subordinated Note Trustee; and
 - (ii) without limiting recourse to those Subordinated Noteholders in any way, those obligations may only be performed by that Subordinated Note Trustee.

- (c) No party to this deed will be obliged to enquire whether an exercise by any Subordinated Note Trustee of any right or any other act or omission of any Subordinated Note Trustee under this deed is within the Subordinated Note Trustee's authority as trustee for the relevant Subordinated Noteholders.
- (d) Each Subordinated Note Trustee's liability, as set out in the Recognition Deed to which it is party, applies to this deed and each other Subordinated Finance Document to which it is party despite any other provision of a Subordinated Finance Document and extends to all obligations of the relevant Subordinated Note Trustee.
- (e) Each Subordinated Note Trustee represents and warrants to the other parties to this deed that the relevant Subordinated Note Terms of Issue are expressed to be subject to this deed.
- (f) Nothing in this clause 1.13 (*Subordinated Note Trustees' capacity*) limits the application of clause 1.7 (*Dealings with Representative*) to any Subordinated Note Trustee or the Subordinated Noteholders.

1.14 Subordinated Noteholders

- (a) Without limiting clause 1.7 (*Dealings with Subordinated Representative*) or clause 1.13 (*Subordinated Note Trustees' capacity*), it is a condition of a Subordinated Noteholder receiving any rights or benefits in connection with this deed that the Subordinated Noteholder is bound by this deed and performs all of the obligations and complies with all subordinations, restrictions and limitations under this deed applicable to, or in connection with, the Subordinated Noteholders or the Subordinated Note Secured Moneys (without needing to become a party to this deed).
- (b) For the avoidance of doubt:
 - (i) upon the 2010 Subordinated Note Issue Date occurring and the 2010 Subordinated Note Trustee acceding to this deed on behalf of the 2010 Subordinated Noteholders, each 2010 Subordinated Noteholder from time to time shall be regarded as a 'Security Beneficiary' and a 'Subordinated Creditor' and is not otherwise required to execute a Recognition Deed; and
 - (ii) upon the 2013 Subordinated Note Issue Date occurring and the 2013 Subordinated Note Trustee acceding to this deed on behalf of the 2013 Subordinated Noteholders, each 2013 Subordinated Noteholder from time to time shall be regarded as a 'Security Beneficiary' and a 'Subordinated Creditor' and is not otherwise required to execute a Recognition Deed.

2 Priorities

Subject to this deed, the parties acknowledge and agree that:

- (a) the Senior Debt, the Subordinated Debt and the Shareholder Debt shall rank in right and priority of payment; and
- (b) the rights and interests of the Senior Creditors and the Subordinated Creditors under or in respect of the Security Trust Deed and each Security shall rank,

in the following order:

- (i) first, the Senior Debt;
- (ii) second, the Subordinated Debt; and

- (iii) third, the Shareholder Debt,

except that, the rights or interests of the Subordinated Creditors to the Takeout Proceeds shall rank ahead of the Senior Creditors.

3 Subordination – Subordinated Debt

3.1 Subordination

- (a) All the Subordinated Debt and payment (from whatever source) of, and the rights and claims of the Subordinated Creditors in respect of, all the Subordinated Debt are, subject only to clause 3.2 (*Permitted payments*), subordinated and postponed and made subject in right of payment to all the Senior Debt and payment (from whatever source) of, and the rights and claims of the Senior Creditors in respect of, all the Senior Debt.
- (b) Subject only to clause 3.2 (*Permitted payments*), until the termination of the First Subordination Period:
- (i) the Subordinated Debt must not (without the prior written consent of all Senior Creditors) be paid or repaid;
 - (ii) unless the consent referred to in clause 3.1(b)(i) (*Subordination*) has been obtained, a Subordinated Creditor may not receive, and the Obligors must not pay or repay, any of the Subordinated Debt to, or at the direction of, a Subordinated Creditor or any person acting or purporting to act on behalf of a Subordinated Creditor; and
 - (iii) neither the Subordinated Borrower nor any other Obligor which is a party to this deed may permit or require any Obligor to pay, prepay, redeem, repurchase, defease or otherwise acquire or satisfy in any manner, any Subordinated Debt, to or at the direction of, a Subordinated Creditor or any person acting or purporting to act, on behalf of a Subordinated Creditor (and each Obligor must ensure that no other Group Member does so).
- (c) The subordination effected by this clause applies at all times during the First Subordination Period, including if and while any Obligor is in liquidation.
- (d) If, on liquidation of an Obligor, there is a distribution of any of the Obligor's assets, including payment in cash, property or securities, to creditors of the Obligor on liquidation, all of the Senior Debt must be paid in full in cash before a payment is made for or on account of the Subordinated Debt.
- (e) The obligation to make any payment under or in respect of the Subordinated Finance Documents which is not permitted under clause 3.2 (*Permitted payments*) will continue for all purposes including the definition of "Secured Moneys" (in the Subordinated Facility Agreement), the definition of "Subordinated Secured Moneys" (in the Security Trust Deed) and the accrual of interest. Subject to clause 5.5 (*Deemed release of obligations*), this deed does not release a Subordinated Borrower or any Obligor from its liability in respect of the Subordinated Debt.

3.2 Permitted payments

- (a) Despite clause 3.1 (*Subordination*), a Subordinated Creditor may receive and retain all payments from any Obligor and from any other Group Member in respect of any principal, interest (including, for the avoidance of doubt, capitalised interest, deferred interest and default interest), fees, expenses and other amounts (including legal fees and Taxes), if and to the extent that:

- (i) the conditions set out in clause 3.2(b) (*Permitted payments*) are fully satisfied; or
 - (ii) the payment is out of the Takeout Proceeds.
- (b) The conditions referred to in clause 3.2(a)(i) (*Permitted payments*) are that immediately before and at the time of payment of any amount referred to in clause 3.2(a) (*Permitted payments*):
- (i) no amount of the Senior Debt (other than any amount due and payable under clause 11.2 (*Mandatory Prepayments – Excess Cashflow*) of the Senior Facility Agreement) is due and payable but unpaid;
 - (ii) the Debt Service Cover Ratio evidenced in the Compliance Certificate most recently provided before that time was greater than 1.10x and the Debt Service Cover Ratio will remain so after that payment is made to the Subordinated Creditors;
 - (iii) no Payment Blockage subsists; and
 - (iv) in the case of the payment of principal or PIK interest, the payment is made from amounts which would otherwise be available to pay Distributions under clauses 15.12(b)(i) to (iv) (inclusive) (*Distributions*) of the Senior Facility Agreement and, in the case of a payment to be made from amounts available to pay Distributions under clauses 15.12(b)(i) of the Senior Facility Agreement, is not made prior to the first sweep from excess cashflow under clause 11.2(a) (*Mandatory Prepayments – Excess Cashflow*) of the Senior Facility Agreement.
- (c) To the extent the conditions in clause 3.2(b) (*Permitted payments*) are satisfied and would continue to be satisfied after any such payment to the Subordinated Creditors is made, the Obligors must pay to the Subordinated Creditors any amount of interest that at any previous time became due and payable under the Subordinated Finance Documents but was not paid as a consequence of the conditions under clause 3.2(b) (*Permitted payments*) not being satisfied. If at the time an amount is due under clause 11.2 (*Mandatory Prepayments – Excess Cashflow*) of the Senior Facility Agreement, the payment of interest permitted by this clause 3.2(c) will be made before any payment is made under that clause 11.2 (*Mandatory Prepayments – Excess Cashflow*).
- (d) The obligation to make any payment under or in respect of the Subordinated Finance Documents which is not permitted to be paid under clause 3.2 (*Permitted payments*) will continue for the purpose only of accruing interest, including default interest, on those amounts in accordance with the Subordinated Finance Documents.
- (e) Nothing in this deed will, in any way, restrict:
- (i) the payment by any Obligor of any amount due and payable under any Subordinated Finance Document on Financial Close;
 - (ii) the payment by any Obligor of any amount due and payable under any Subordinated Finance Document on the 2010 Subordinated Note Issue Date to the extent (and only to the extent) that such payment is made out of the balance of the Takeout Proceeds remaining (if any) after all of the Subordinated Debt under the Subordinated Facility Agreement has been repaid from the Takeout Proceeds;
 - (iii) the payment of any fees to any Subordinated Note Trustee pursuant to the terms of the relevant Subordinated Note Trust Deed; or

- (iv) the payment of the agency fee to the Subordinated Agent pursuant to the terms of the Subordinated Finance Documents as at the date of this deed.

3.3 Payment Blockage

- (a) A **Payment Blockage** subsists, and no payment is permitted under clause 3.2(a) (*Permitted payments*) to a Subordinated Creditor if, during the First Subordination Period, a Senior Event of Default or Senior Potential Event of Default subsists (**Original Payment Blockage**) and the relevant Representative of the relevant Senior Creditors has delivered a notice to the Representative of the relevant Subordinated Creditors saying so.
- (b) A Payment Blockage shall cease to subsist on the earliest to occur of:
 - (i) expiry of 179 days after the Senior Event of Default or Senior Potential Event of Default occurs;
 - (ii) when the Senior Event of Default or Senior Potential Event of Default on which it was based ceases to subsist (except where a Senior Potential Event of Default ceases to subsist because it has become a Senior Event of Default); and
 - (iii) when each Representative of the relevant Senior Creditors notifies the Representative of the relevant Subordinated Creditors that the Payment Blockage has ceased to apply.
- (c) The Representative of the relevant Senior Creditors must promptly notify each Representative of the relevant Subordinated Creditors upon it becoming actually aware that a Senior Event of Default or Senior Potential Event of Default, in respect of which a notice has been delivered under clause 3.3(a) (*Payment Blockage*), has ceased to subsist (and that the Payment Blockage has therefore ended).
- (d) To the extent a Senior Potential Event of Default becomes a Senior Event of Default due to the expiry of a grace period or the giving of a notice, the period elapsed for that Senior Event of Default for the purpose of clause 3.3(b)(i) (*Payment Blockage*) will be deemed to have commenced on the date the Senior Potential Event of Default occurred. The Representative of the relevant Senior Creditor must promptly notify each Representative of the relevant Subordinated Creditors upon it becoming actually aware that:
 - (i) a Senior Event of Default or a Senior Potential Event of Default has occurred and the date it occurred; and
 - (ii) a Senior Event of Default or a Senior Potential Event of Default has ceased to subsist (and that the Payment Blockage has therefore ended).
- (e) The Representative of the relevant Senior Creditors may, only on or after 358 days from the occurrence of an Original Payment Blockage, initiate another Payment Blockage in relation to the Senior Event of Default or the Senior Potential Event of Default which gave rise to that Original Payment Blockage. To avoid doubt, a further Payment Blockage may occur at any time in respect of the same type of Senior Event of Default or Senior Potential Event of Default if it arises due to any event or set of circumstances which were not existing at the time the initial Payment Blockage arose from that same type of Senior Event of Default or Senior Potential Event of Default.

3.4 Trust by Subordinated Creditors

- (a) Any amount paid to or received or recovered by a Subordinated Creditor (directly or indirectly) in respect of its Subordinated Debt contrary to clause 3.1

(*Subordination*) or any other provisions of this deed whether in the liquidation of an Obligor or for any other reason (including by payment, set-off, combination of accounts, counterclaim or abatement) will be held by the Subordinated Creditor in trust for the benefit of the Security Beneficiaries and must be paid immediately and directly to the Security Trustee for application in accordance with the Security Trust Deed.

- (b) If, contrary to this deed, a Subordinated Creditor receives any money on account of its Subordinated Debt other than a Permitted Payment:
- (i) from the liquidation of any Obligor or any other person and the trust created under clause 3.4(a) (*Trust by Subordinated Creditors*) fails; or
 - (ii) whether or not from the liquidation of any Obligor or any other person and the money is not for any other reason subject to the trust created under clause 3.4(a) (*Trust by Subordinated Creditors*),

it must immediately pay to the Security Trustee (for application in accordance with the Security Trust Deed) an amount equal to the lesser of (x) that money and (y) the aggregate of all Senior Debt and all other amounts payable in priority to the Senior Debt in accordance with the Security Trust Deed.

- (c) If, after the commencement of the liquidation of any Obligor, a Subordinated Creditor does not actually receive a dividend, payment or other distribution because of the application of any law or rule relating to set-off (including section 553C of the Corporations Act) and its Subordinated Debt is reduced by operation of that law or rule, then the Subordinated Creditor must nevertheless pay to the Security Trustee (for application in accordance with the Security Trust Deed) that amount which would otherwise have been payable under any liquidation had the set-off not applied and had the dividend, payment or other distribution actually been received.
- (d) The perpetuity period applicable to the trust contained in this clause 3.4 (*Trust by Subordinated Creditors*) is a period from the date of this deed until the earlier of:
- (i) the day before the date 80 years from the date of this deed; and
 - (ii) the expiry of the First Subordination Period.
- (e) The Subordinated Agent acknowledges that on the date of this deed the Security Trustee has deposited in New South Wales the sum of \$10 with the Subordinated Agent (on behalf of the Subordinated Creditors) to establish the trust to which the Subordinated Creditors are to act as trustee under this deed.
- (f) The Subordinated Agent declares that it holds the sum mentioned in clause 3.4(e) (*Trust by Subordinated Creditors*), and the Subordinated Creditors will hold all amounts referred to in clause 3.4(a) (*Trust by Subordinated Creditors*), on trust for payment to the Security Trustee in accordance with this clause 3.4 (*Trust by Subordinated Creditors*).

3.5 Liquidation

- (a) A Subordinated Creditor may, and must if required by the Security Trustee, prove in any liquidation of any Obligor for all or part of its Subordinated Debt nominated by the Security Trustee subject to the Security Trustee making such requests to all Subordinated Creditors in respect of the same proportion of their Subordinated Debt, and any money recovered or received under or in respect of the liquidation (other than a solvent liquidation, reconstruction, amalgamation, merger or consolidation that is permitted under the Senior Finance Documents or has previously been approved in writing by each Representative for Senior Creditors)

will be dealt with in accordance with this deed. The Subordinated Creditors must vote as directed by the Security Trustee in any vote in any procedure, meeting or other decision making body in relation to the liquidation of an Obligor.

- (b) If a Subordinated Creditor proves in any liquidation pursuant to clause 3.5(a) (*Liquidation*), it must not withdraw or vary or attempt to withdraw or vary any proof or claim so lodged without the prior written consent of the Security Trustee.
- (c) If a Subordinated Creditor does not comply with clauses 3.5(a) and (b) (*Liquidation*), the Security Trustee may, and each Subordinated Creditor irrevocably authorises the Security Trustee to, prove in the liquidation in accordance with those clauses (including, by filing any claim or proof on behalf of the Subordinated Creditor).

3.6 Suspense accounts

Without limiting clause 4.2 (*Receipt of money after Determination Date*) of the Security Trust Deed, the Security Trustee, a Representative for any Senior Creditors or any Senior Creditor may:

- (a) apply to the credit of a suspense account:
 - (i) any amounts received by it under and in accordance with this deed;
 - (ii) any dividends, distributions or other amounts received in any liquidation of any Obligor in respect of the Senior Debt or any money due or owing under this deed;
 - (iii) any other amounts received from any Obligor, any Subordinated Creditor or any other person in respect of the Senior Debt or any money due or owing under this deed; and
- (b) retain the amounts referred to in clause 3.6(a) (*Suspense accounts*) in a suspense account for as long as it determines (acting in good faith) is necessary in the circumstances where the Security Trustee, that Representative or any such Senior Creditor, acting reasonably, considers there is a risk that it will be required to disgorge the payment because of laws governing voidable preferences or insolvent transactions. The Security Trustee, that Representative or any such Senior Creditor is not obliged to immediately apply such amounts in or towards satisfaction of the Senior Debt or any money due or owing to it under this deed.

3.7 No prejudice

The Powers of a Senior Creditor to enforce subordination under this clause 3 (*Subordination – Subordinated Debt*) and the other provisions of this deed are not affected or prejudiced by any act or omission on the part of an Obligor or a Subordinated Creditor.

3.8 Termination of subordination

The subordination of the Subordinated Debt to the Senior Debt and the other provisions of this clause 3 (*Subordination – Subordinated Debt*) cease to be of any force or effect on the termination of the First Subordination Period.

4 Subordination – Shareholder Debt

4.1 Subordination

- (a) All the Shareholder Debt and payment (from whatever source) of, and the rights and claims of Holdco I or Holdco 1a in respect of, all the Shareholder Debt are, subject only to clause 4.2 (*Permitted payments*), subordinated and postponed and made subject in right of payment to all the Secured Moneys and payment (from whatever source) of, and the rights and claims of the Security Beneficiaries in respect of, all the Secured Moneys.
- (b) Subject only to clause 4.2 (*Permitted payments*), until the termination of the First Subordination Period and the Second Subordination Period:
 - (i) the Shareholder Debt must not (without the prior written consent of all Senior Creditors during the First Subordination Period or the Subordinated Agent or (if the 2010 Subordinated Note Issue Date has occurred) each Subordinated Note Trustee after the end of the First Subordination Period) be paid or repaid;
 - (ii) unless the consent referred to in clause 4.1(b)(i) (*Subordination*) has been obtained, Holdco I and Holdco 1a may not receive, and each Obligor must not pay or repay, any of the Shareholder Debt to, or at the direction of, Holdco I, Holdco 1a or any person acting or purporting to act on behalf of Holdco I or Holdco 1a; and
 - (iii) neither Holdco II, Holdco 2a nor any other Obligor which is a party to this deed may permit or require any Obligor to pay, prepay, redeem, repurchase, defease or otherwise acquire or satisfy in any manner, any Shareholder Debt, to or at the direction of, Holdco I, Holdco 1a or any person acting or purporting to act, on behalf of Holdco I or Holdco 1a (and each Obligor must ensure that no other Group Member does so).
- (c) The subordination effected by this clause applies at all times up and until the termination of the First Subordination Period and the Second Subordination Period, including if and while any Obligor is in liquidation.
- (d) If, on liquidation of an Obligor, there is a distribution of any of the Obligor's assets, including payment in cash, property or securities, to creditors of the Obligor on liquidation, all of the Senior Debt and the Subordinated Debt must be paid in full in cash before a payment is made for or on account of the Shareholder Debt.

4.2 Permitted payments

Despite clause 4.1 (*Subordination*) and subject to clause 11.2(a) (*Mandatory Prepayments – Excess Cashflow*) of the Senior Facility Agreement, Holdco I and Holdco 1a may receive and retain all payments from an Obligor in respect of any Shareholder Debt permitted in accordance with:

- (a) clause 15.12(b)(i) (*Distributions*) to clause 15.12(b)(iv) (*Distributions*) (inclusive) of the Senior Facility Agreement; and
- (b)
 - (i) clause 11.12(b)(i) (*Distributions*) to clause 11.12(b)(iv) (*Distributions*) (inclusive) of the Subordinated Facility Agreement; or
 - (ii) (if the 2010 Subordinated Note Issue Date has occurred) each Subordinated Note Terms of Issue,

provided that, at the time the payment is made, all payments then due and owing in respect of the Senior Debt and the Subordinated Debt have been paid.

4.3 Trust by Holdco I and Holdco 1a

- (a) Any amount paid to or received or recovered by Holdco I or Holdco 1a (directly or indirectly) in respect of any Shareholder Debt contrary to clause 4.1 (*Subordination*) or any other provision of this deed whether in the liquidation of an Obligor or, for any other reason (including by payment, set-off, combination of accounts, counterclaim or abatement) will be held by Holdco I or Holdco 1a (as the case may be) in trust for the benefit of the Security Beneficiaries and must be paid immediately and directly to the Security Trustee for application in accordance with the Security Trust Deed.
- (b) If, contrary to this deed, Holdco I or Holdco 1a receives any money on account of its Shareholder Debt other than a Permitted Payment:
 - (i) from the liquidation of any Obligor or any other person and the trust created under clause 4.3(a) (*Trust by Holdco I and Holdco 1a*) fails; or
 - (ii) whether or not from the liquidation of any Obligor or any other person and the money is not for any other reason subject to the trust created under clause 4.3(a) (*Trust by Holdco I and Holdco 1a*),

it must immediately pay to the Security Trustee (for application in accordance with the Security Trust Deed) an amount equal to the lesser of (x) that money and (y) the aggregate of all Senior Debt, all Subordinated Debt and all other amounts payable in priority to those amounts in accordance with the Security Trust Deed.

- (c) If, after the commencement of the liquidation of any Obligor, Holdco I or Holdco 1a (as the case may be) does not actually receive a dividend, payment or other distribution because of the application of any law or rule relating to set-off (including section 553C of the Corporations Act) and the Shareholder Debt is reduced by operation of that law or rule, then Holdco I or Holdco 1a (as the case may be) must nevertheless pay to the Security Trustee (for application in accordance with the Security Trust Deed) that amount which would otherwise have been payable under any liquidation had the set-off not applied and had the dividend, payment or other distribution actually been received.
- (d) The perpetuity period applicable to the trust contained in this clause 4.3 (*Trust by Holdco I and Holdco 1a*) is a period from the date of this deed until the earlier of:
 - (i) the day before the date 80 years from the date of this deed; and
 - (ii) the expiry of the Second Subordination Period.
- (e) Holdco I and Holdco 1a acknowledges that on the date of this deed, the Security Trustee has deposited in New South Wales the sum of \$10 with Holdco I and Holdco 1a to establish the trust to which Holdco I and Holdco 1a is to act as trustee under this deed.
- (f) Holdco I and Holdco 1a declares that it holds the sum mentioned in clause 4.3(e) (*Trust by Holdco I and Holdco 1a*), and it will hold all amounts referred to in clause 4.3(a) (*Trust by Holdco I and Holdco 1a*), on trust for payment to the Security Trustee in accordance with this clause 4.3 (*Trust by Holdco I and Holdco 1a*).

4.4 Liquidation

- (a) Holdco I and Holdco 1a may, and must if required by the Security Trustee, prove in any liquidation of any relevant Group Member for all or part of its Shareholder Debt

nominated by the Security Trustee, and any money recovered or received under or in respect of the liquidation (other than a solvent liquidation, reconstruction, amalgamation, merger or consolidation that is permitted under the Senior Finance Documents and the Subordinated Finance Documents or has previously been approved in writing by each Representative for Senior Creditors and each Representative for Subordinated Creditors) will be dealt with in accordance with this deed. Holdco I and Holdco 1a must vote as directed by the Security Trustee in any vote in any procedure, meeting or other decision making body in relation to the liquidation of any such Group Member.

- (b) If Holdco I or Holdco 1a proves in any liquidation pursuant to clause 4.4(a) (*Liquidation*), it must not withdraw or vary or attempt to withdraw or vary any proof or claim so lodged without the prior written consent of the Security Trustee.
- (c) If Holdco I or Holdco 1a does not comply with clauses 4.4(a) and 4.4(b) (*Liquidation*), the Security Trustee may, and Holdco I and Holdco 1a irrevocably authorises the Security Trustee to, prove in the liquidation in accordance with those clauses (without limitation, by filing any claim or proof on behalf of Holdco I or Holdco 1a, as the case may be).

4.5 No prejudice

The Powers of a Security Beneficiary to enforce subordination under this clause 4 (*Subordination – Shareholder Debt*) and the other provisions of this deed are not affected or prejudiced by any act or omission on the part of an Obligor, Holdco 1a or Holdco I.

4.6 Termination of subordination

The subordination of the Shareholder Debt to the Secured Moneys and the other provisions of which clause 4 (*Subordination – Shareholder Debt*) cease to be of any force or effect on the termination of the Second Subordination Period.

5 Rights and restrictions

5.1 Acceleration Rights – Subordinated Creditor

A Subordinated Creditor may only exercise Acceleration Rights in respect of its Subordinated Debt if one or more of the following events occurs:

- (a) during or after the Enforcement Restriction Period, the Senior Creditors accelerate the Senior Debt or an Enforcement Action has been taken under a Security;
- (b) without limiting any other paragraph of this clause 5.1 (*Acceleration Rights – Subordinated Creditor*), if a Subordinated Event of Default occurs, or continues to subsist, after the Enforcement Restriction Period;
- (c) the Senior Debt has not been repaid within six months of the latest maturity date of the Senior Debt under the Senior Facility Agreement and the Senior Creditors have not instructed the Security Trustee to commence Enforcement Action under the Securities prior to the expiry of that six month period;
- (d) during or after the Enforcement Restriction Period, an Insolvency Event occurs in relation to an Obligor unless waived by the Senior Creditors and provided that such action may then only be taken against that Obligor in respect of which an Insolvency Event has occurred and not against, or in relation to, any other Group Member in respect of which an Insolvency Event has not occurred;
- (e) during or after the Enforcement Restriction Period:

- (i) any payment which is due and payable under the Subordinated Facility Agreement or (if the 2010 Subordinated Note Issue Date has occurred) any Subordinated Note Terms of Issue and is permitted to be paid under clause 3.2 (*Permitted payments*) is not paid within 15 Business Days of written notice from the Subordinated Creditor to each Representative for the Senior Creditors; or
 - (ii) interest or other amounts payable under the Subordinated Facility Agreement or (if the 2010 Subordinated Note Issue Date has occurred) any Subordinated Note Terms of Issue that would have become due and payable on a date (a **Payment Date**) but for the suspension of that payment during a Payment Blockage under clause 3.3 (*Payment Blockage*) do not become due and payable (and are not paid) for more than 180 days after the Payment Date and following the expiration of that 180 day period, are not paid within 15 Business Days of notice given after the expiration of the 180 day period from the Subordinated Creditor (or any Representative of the Subordinated Creditor) to each Representative for the Senior Creditors;
- (f) during or after the Enforcement Restriction Period, any Obligor breaches an undertaking given by it in clause 5.10 (*Amendments and releases of Senior Finance Documents*) and such breach is not remedied within any cure period permitted under the Subordinated Finance Documents prior to that breach becoming a Subordinated Event of Default under the Subordinated Finance Documents;
- (g) during or after the Enforcement Restriction Period, an Obligor (other than Holdco II and Holdco 2a) ceases to be a wholly-owned Subsidiary of Holdco II or Holdco 2a, in breach of the Subordinated Finance Documents, and such breach is not remedied within any cure period permitted under the Subordinated Finance Documents, and a Representative for the Subordinated Creditors has notified the Subordinated Borrower in writing (with a copy to the Security Trustee, each Representative for the Senior Creditors of which the Representatives for the Subordinated Creditors are aware and each other Representative for the Subordinated Creditors) that the Representative for the Subordinated Creditors objects to the proposed disposal; or
- (h) during or after the Enforcement Restriction Period, the Obligors (taken as a whole):
- (i) cease all or any material part of the Core Business (other than as a result of a Permitted Disposal); or
 - (ii) carry on any business or other activity other than the Core Business and any activity which is consistent with that Core Business; or
 - (iii) take any action which would substantially alter the Core Business (other than business expansion),

in breach of the Subordinated Finance Documents, and such breach is not remedied within any cure period permitted under the Subordinated Finance Documents, and the Subordinated Agent or (if the 2010 Subordinated Note Issue Date has occurred) a Subordinated Note Trustee has, in accordance with the terms of this deed, notified the Subordinated Borrower in writing (with a copy to the Security Trustee, each Representative for the Senior Creditors of which the Representatives for the Subordinated Creditors are aware and each other Representative for the Subordinated Creditors) that the relevant Subordinated Creditors object to the proposed cessation or change.

A Subordinated Creditor must immediately notify the Senior Creditors if it exercises Acceleration Rights in respect of its Subordinated Debt at any time during the First Subordination Period.

5.2 Enforcement Action

A Subordinated Creditor may only instruct the Security Trustee to take Enforcement Action:

- (a) if the Senior Debt has not been repaid in full within six months after the Senior Creditors have exercised their Acceleration Rights (and the Senior Creditors have still not instructed the Security Trustee to commence Enforcement Action); or
- (b) if the Senior Debt has not been repaid in full within six months after the latest maturity date of the Senior Debt under the Senior Facility Agreement (and the Senior Creditors have not instructed the Security Trustee to commence Enforcement Action),

provided that:

- (i) the Security Trustee is then instructed to commence Enforcement Action in accordance with the provisions of this deed and in accordance with the instructions of the Senior Agent (other than any instructions from the Senior Agent to cease Enforcement Action); and
- (ii) the Security Trustee continues to take Enforcement Action.

5.3 Preservation of Subordinated Debts

- (a) Despite any other term of this deed postponing, subordinating or preventing the payment of the Subordinated Debt, as between the Obligors and the relevant Subordinated Creditor:
 - (i) the Subordinated Debt shall remain owing or payable (and interest or default interest shall continue to accrue at the Default Rate from the due date irrespective of whether a Payment Blockage subsists); and
 - (ii) for the avoidance of doubt, interest may be charged on the Subordinated Debt at the Default Rate (whether during or after the Enforcement Restriction Period) in accordance with the terms of the Subordinated Facility Agreement or (if the 2010 Subordinated Note Issue Date has occurred) any Subordinated Note Terms of Issue.
- (b) No delay in exercising rights and remedies under any of the Subordinated Finance Documents by reason of any term of this deed (other than clause 5.3(a) (*Preservation of Subordinated Debts*)) shall operate as a permanent waiver of any of those rights and remedies.

For the avoidance of doubt, interest at the Default Rate will cease to accrue on the Subordinated Debt from such time an Event of Default is deemed waived under clause 5.4 (*Waivers*).

5.4 Waivers

- (a) Subject to clause 5.4(b) (*Waivers*), during the First Subordination Period, any waiver, consent, release, amendment or approval by the Senior Creditors under a Senior Finance Document and notified to the Subordinated Agent or (if the 2010 Subordinated Note Issue Date has occurred) each Subordinated Note Trustee will bind the Subordinated Creditors and will have the same effect in relation to any equivalent provision of a Subordinated Finance Document during the First Subordination Period (including a waiver of any cross default provision in the Subordinated Finance Documents) except if given in relation to:

- (i) any Obligor's obligations to pay any Subordinated Creditor its Secured Moneys;
 - (ii) waivers or consents given by the Senior Creditors in respect of the matters dealt with in clauses 5.1 (*Acceleration Rights – Subordinated Creditor*), 5.9 (*Permitted actions*) or 5.10 (*Amendments and releases of Senior Finance Documents*) or in respect of undertakings applying exclusively for the benefit of the Subordinated Creditors and not the Senior Creditors;
 - (iii) waivers or consents given by the Senior Creditors in respect of any restriction imposed on any Obligor incurring Finance Debt (other than as contemplated by clauses 9.1 (*Refinancing of Senior Debt*) and 9.3 (*Additional Senior Debt*)); and
 - (iv) any provision of this deed that is for the benefit only of the Subordinated Creditors.
- (b) Any waiver, consent, release, amendment or approval under clause 5.4(a) (*Waivers*) will be disregarded for the purposes of determining whether a condition precedent has been satisfied under the Subordinated Finance Documents. For the avoidance of doubt, interest may accrue on the Subordinated Debt at the Default Rate under the Subordinated Finance Documents on the occurrence of an Event of Default which is continuing until a deemed waiver is given under clause 5.4 (*Waiver*).

5.5 Deemed release of obligations

- (a) If, as a result of the Security Trustee (or any person nominated by it) enforcing or seeking to enforce any Security, all the share capital of an Obligor (a **Sale Company**) is or will be (directly or indirectly) sold or otherwise disposed, any Subordinated Debt or any Shareholder Debt owed by that Sale Company or any of its Subsidiaries (together, the **Sale Group** and each, a **Sale Group Member**), and any Security Interest given by the Sale Group in connection with any such Subordinated Debt or any Shareholder Debt, shall be deemed irrevocably and unconditionally released (as against that Sale Group Member only) to the extent that the net proceeds of that sale or disposal are not sufficient to repay the Subordinated Debt or the Shareholder Debt (as the case may be) in full in accordance with this deed at the time of sale or other disposal of all that share capital without any further action or documentation required on the part of the Subordinated Creditors, Holdco 1a or Holdco I (as the case may be).
- (b) In the circumstances specified in paragraph (a), the Subordinated Creditors, Holdco 1a and Holdco I (as the case may be) shall not be entitled to take any further action against any Sale Group Member from the time of the deemed release and the Subordinated Creditors, Holdco 1a and Holdco I (as the case may be) will, at the request of the Security Trustee, deliver to the Security Trustee an appropriate instrument confirming such release within three Business Days of request.
- (c) Any release under this clause does not release any Obligor which is not a Sale Group Member from any of its obligations or liabilities with respect to the Subordinated Debt (whether under any Guarantee of the Subordinated Debt or otherwise) or the Shareholder Debt.

5.6 Further restrictions

During the Enforcement Restriction Period, the Subordinated Agent or (if the 2010 Subordinated Note Issue Date has occurred) each Subordinated Note Trustee and the Subordinated Creditors in respect of the Subordinated Debt and Holdco I and Holdco 1a in respect of the Shareholder Debt must not (as applicable):

- (a) vary or otherwise amend any Subordinated Finance Document (whether directly or indirectly) in any manner which would have the effect of:
 - (i) increasing:
 - (A) the amount of interest or fees payable under any Subordinated Finance Document;
 - (B) the frequency of, or bringing forward the date for making, payments of interest or fees under any Subordinated Finance Document,

or altering the currency of payment, basis of calculation, capitalisation or deferral of any interest or fees under any Subordinated Finance Document (including any change from non-cash payment or capitalisation of interest to cash payment of interest), in each case, which is not contemplated by the original form of the Subordinated Finance Documents as they may be amended in compliance with this deed (other than as a result of the exercise of a right permitted under clause 5.1 (*Acceleration Rights – Subordinated Creditor*));
 - (ii) bringing forward the maturity date for repayment of the principal amount of the Subordinated Debt or the date of any required repayment or prepayment of any principal amount comprised in the Subordinated Debt (except as a result of the exercise of a right permitted under clause 5.1 (*Acceleration Rights – Subordinated Creditor*); or
 - (iii) amending any representations and warranties, undertakings (including financial covenants), events of default (however described) or other provisions, except where corresponding amendments are made to the Senior Finance Documents;
- (b) accept the benefit of, or permit to subsist, any Security Interest or Guarantee, indemnity or assurance against financial loss in respect of its Subordinated Debt (other than the Subordinated Finance Documents (including the Securities)) or Shareholder Debt (as the case may be) or, provided it reflects the priority principles referred to in clause 2 (*Priorities*), if the Senior Debt has the benefit of the same Security Interest or Guarantee;
- (c) permit its Subordinated Debt or the Shareholder Debt (as the case may be) to be satisfied, extinguished or discharged except as expressly provided for in this deed;
- (d) apply any money or assets in discharge or in reduction of the Subordinated Debt or the Shareholder Debt (as the case may be) or otherwise exercise any right of set-off, counterclaim, abatement or combination or similar right or procedure against, or realise any Security Interest from, any Obligor except as expressly provided for in this deed;
- (e) request or convene a meeting to consider a resolution for (or vote in favour of any resolution for) winding up or arrangement with creditors or appointment of an administrator to any Obligor, except in circumstances where the Subordinated Creditors would be permitted to take action under clause 5.9(c) (*Permitted actions*) or as otherwise expressly provided for in this deed;
- (f) apply to the court to wind up or prove in the winding up of any Obligor, except in circumstances where the Subordinated Creditors would be permitted to take action under clause 5.9(c) (*Permitted actions*) or as otherwise expressly provided for in this deed;

- (g) enter into any other agreement or arrangement which results in amounts owing in respect of its Subordinated Debt or the Shareholder Debt (as the case may be) not being subordinated to the Senior Debt; or
- (h) permit any Subordinated Debt or Shareholder Debt to be evidenced by a negotiable instrument, unless the instrument is in form and substance acceptable to the Senior Agent and is expressed on its face to be subject to the subordination established by this deed or is deposited (prior to any negotiation of that instrument) with the Senior Agent for safe keeping,

without the prior written consent of all Senior Creditors. The restrictions in clause 5.6(a) (*Further restrictions*) do not apply to any technical, procedural or mechanical variations as part of the usual administration of the Subordinated Finance Documents which are not material or adverse to the interests of the Senior Creditors or any reductions in, or increase to, the interest rate under the Subordinated Facility Agreement (which, in the case of an increase, does not exceed the maximum rate permitted by the Finance Documents) as contemplated in the Subordinated Facility Agreement.

5.7 Enforcement by Senior Creditors

- (a) The subordination effected by this deed is in addition to and will not prejudice or affect any Security Interest or any right or remedy of any Senior Creditor in respect of the Senior Debt and each party agrees that, except as otherwise expressly provided in this deed:
 - (i) the obligations and liabilities of the Obligors, or any other party or parties for or in respect of the Senior Debt may, from time to time, in whole or in part, be renewed, extended, amended, supplemented, novated, accelerated, compromised, terminated, sold, transferred, exchanged, waived or released by the Senior Creditors in accordance with the Senior Finance Documents as they see fit in their own interests and without reference to the Subordinated Creditors or to any Obligor, Group Member, Holdco 1a or Holdco I;
 - (ii) to the maximum extent permitted by law, the Senior Creditors may exercise or refrain from exercising any Power granted by the Securities in accordance with the Senior Finance Documents without regard to the interests of the Subordinated Creditors or to any Obligor, Group Member, Holdco 1a or Holdco I and as if the Subordinated Debt and Shareholder Debt did not exist (including the right to perfect any Security Interest created in connection with the Senior Debt);
 - (iii) any and all Security Interests at any time, present or future, held, given or intended to be given to secure the Senior Debt and any rights or remedies of the Senior Creditors in respect of the Senior Debt may, from time to time, in whole or in part, be exchanged, sold, transferred, released, modified, waived or extended by the Senior Creditors or any Obligor in accordance with the Senior Finance Documents without regard to the interests of the Subordinated Creditors, Holdco 1a or Holdco I and as if the Subordinated Debt and Shareholder Debt did not exist;
 - (iv) if the Senior Debt is wholly or partially paid out of any proceeds received in respect of the Subordinated Debt and/or Shareholder Debt, there will be no subrogation to the rights of the Senior Creditors, until the Senior Debt has been Finally Paid;
 - (v) the Senior Creditors and any Controller appointed by them may exercise their rights under the Senior Finance Documents in the manner and at the time they consider fit in accordance with the Senior Finance Documents and free of any constraint in the Subordinated Finance Documents (other than

this deed) or with respect to any Shareholder Debt and, subject as required by applicable law, solely having regard to their own interests and, following any enforcement action against any Obligor or enforcement of the Securities, may cease that enforcement;

- (vi) any balance or balances of funds with the Senior Creditors at any time standing to the credit of any Obligor may, from time to time, in whole or in part, be surrendered or released to another Senior Creditor in accordance with the Senior Finance Documents; and
- (vii) the undertakings of the parties to the Finance Documents will not restrict the sale, exchange, transfer or taking of any other action by the Security Trustee or any Controller or Attorney on the enforcement of the Securities pursuant to the Security Trust Deed,

and that all of the above shall be without impairing, abridging, diminishing, releasing or affecting the subordination of the Subordinated Debt and the Shareholder Debt to the Senior Debt provided for in this deed and without any of the Senior Creditors incurring any liability to any of Holdco I, Holdco 1a, the Subordinated Creditors or any Obligor.

- (b) Until the end of the First Subordination Period, except as otherwise expressly provided in this deed:
 - (i) each of the Senior Creditors and any Receiver or Attorney may exercise all Powers under or in respect of the Senior Finance Documents as though the Subordinated Creditors, Holdco 1a and Holdco I had no rights or interest in relation to any Obligor, the Secured Property, any Security or the property or assets subject to the trusts under this deed or the Security Trust Deed;
 - (ii) in enforcing any Senior Finance Document, the Senior Creditors and any Receiver or Attorney are entitled to act entirely in their own interests and are not required to, consult with or take into account in any way the interests of any Subordinated Creditor or any Obligor, Group Member, Holdco 1a or Holdco I;
 - (iii) the Senior Creditors and any Receiver or Attorney may take any action under or in relation to a Senior Finance Document they see fit in their absolute discretion in accordance with the Senior Finance Documents, even if taking such action would or might constitute a breach of the Subordinated Finance Documents, and they will not be liable for inducing a breach of contract for taking such action;
 - (iv) none of the Subordinated Creditors have any rights in respect of any Security or the proceeds of any Security except as set out in this deed and the Security Trust Deed; and
 - (v) none of the Senior Creditors nor any Receiver or Attorney owe any Subordinated Creditor any duties, obligations or standard of care except as expressly set out in the Security Trust Deed and this deed. In particular, any obligation or requirement in any Senior Finance Document in relation to reasonableness, good faith or timeliness is not owed to any Subordinated Creditor.

5.8 Enforcement by Subordinated Creditors

- (a) The subordination effected by clause 4 (*Subordination – Shareholder Debt*) of this deed is in addition to and will not prejudice or affect any Security Interest or any right or remedy of any Subordinated Creditor in respect of the Subordinated Debt and each Obligor agrees that, except as otherwise expressly provided in this deed:

- (i) the obligations and liabilities of the Obligors, or any other party or parties for or in respect of the Subordinated Debt may, from time to time, in whole or in part, be renewed, extended, amended, supplemented, novated, accelerated, compromised, terminated, sold, transferred, exchanged, waived or released by the Subordinated Creditors in accordance with the Subordinated Finance Documents as they see fit in their own interests and without reference to any Obligor, Group Member, Holdco 1a or Holdco I;
- (ii) to the maximum extent permitted by law, the Subordinated Creditors may (subject to this deed) exercise or refrain from exercising any Power granted by the Securities in accordance with the Subordinated Finance Documents without regard to the interests of any Obligor and as if the Shareholder Debt did not exist (including the right to perfect any Security Interest created in connection with the Subordinated Debt);
- (iii) any and all Security Interests at any time, present or future, held, given or intended to be given for the Subordinated Debt and any rights or remedies of the Subordinated Creditors in respect of the Subordinated Debt may, from time to time, in whole or in part, be exchanged, sold, transferred, released, modified, waived or extended by the Subordinated Creditors in accordance with the Subordinated Finance Documents without regard to the interests of any Obligor and as if the Shareholder Debt did not exist;
- (iv) if the Subordinated Debt is wholly or partially paid out of any proceeds received in respect of the Shareholder Debt, there will be no subrogation to the rights of the Subordinated Creditors, until the Subordinated Debt has been Finally Paid;
- (v) the Subordinated Creditors and any Controller appointed by them may exercise their rights under the Subordinated Finance Documents in the manner and at the time they consider fit in accordance with the Subordinated Finance Documents and free of any constraint in respect of the Shareholder Debt (other than this deed) and, subject as required by applicable law, solely having regard to their own interests and, following any enforcement action against any Obligor or enforcement of the Securities, may cease that enforcement;
- (vi) any balance or balances of funds with the Subordinated Creditors at any time standing to the credit of any Obligor may, from time to time, in whole or in part, be surrendered or released to another Subordinated Creditor in accordance with the Subordinated Finance Documents; and
- (vii) the undertakings of the parties to the Finance Documents will not restrict the sale, exchange, transfer or taking of any other action by the Security Trustee or any Controller or Attorney on the enforcement of the Securities pursuant to the Security Trust Deed,

and that all of the above shall be without impairing, abridging, diminishing, releasing or affecting the subordination of the Shareholder Debt to the Subordinated Debt provided for in this deed and without any of the Subordinated Creditors incurring any liability to any Obligor, Group Member, Holdco 1a or Holdco I.

- (b) Until the end of the Second Subordination Period, except as otherwise expressly provided in this deed:
 - (i) each of the Subordinated Creditors and any Receiver or Attorney may exercise all Powers under or in respect of the Subordinated Finance Documents as though Holdco I and Holdco 1a had no rights or interest in

relation to any Obligor, the Secured Property, any Security or the property or assets subject to the trusts under this deed or the Security Trust Deed;

- (ii) in enforcing any Subordinated Finance Document, the Subordinated Creditors and any Receiver or Attorney are entitled to act entirely in their own interests and are not required to, consult with or take into account in any way the interests of Holdco I or Holdco 1a;
- (iii) the Subordinated Creditors and any Receiver or Attorney may take any action under or in relation to a Subordinated Finance Document they see fit in their absolute discretion in accordance with the Subordinated Finance Documents, even if taking such action would or might constitute a breach in relation to the Shareholder Debt and they will not be liable for inducing a breach of contract for taking such action;
- (iv) Holdco I and Holdco 1a have no rights in respect of any Security or the proceeds of any Security except as set out in this deed and the Security Trust Deed; and
- (v) none of the Subordinated Creditors nor any Receiver or Attorney owe Holdco I or Holdco 1a any duties, obligations or standard of care except as expressly set out in the Security Trust Deed and this deed. In particular, any obligation or requirement in any Subordinated Finance Document in relation to reasonableness, good faith or timeliness is not owed to Holdco I or Holdco 1a.

5.9 Permitted actions

Without limiting any other right of a Subordinated Creditor under this deed, a Subordinated Creditor may seek an injunction, declaratory relief or other equitable remedy (other than claiming equitable damages) at any time either during or after the Enforcement Restriction Period:

- (a) to enforce the undertakings in clause 5.10 (*Amendments and releases of Senior Finance Documents*);
- (b) to enforce the undertakings in clause 9 (*Refinancing and additional debt*);
- (c) to enforce any covenant to pay all or any part of its Subordinated Debt if:
 - (i) an Obligor breaches any of its obligations to make any payment under the Subordinated Finance Documents of that Subordinated Creditor where such payment is a Permitted Payment;
 - (ii) the Subordinated Creditor or Subordinated Agent or (if the 2010 Subordinated Note Issue Date has occurred) any Subordinated Note Trustee gives notice to the Borrowers and the Senior Creditors requiring that payment breach to be remedied within 10 Business Days of the date of issue of that notice; and
 - (iii) the payment breach is not remedied within 10 Business Days of the date of issue by the Subordinated Creditor or Subordinated Agent or (if the 2010 Subordinated Note Issue Date has occurred) any Subordinated Note Trustee of that notice.

5.10 Amendments and releases of Senior Finance Documents

- (a) Subject to clause 5.10(b) (*Amendments and releases of Senior Finance Documents*), the Senior Creditors and the Obligors must not (whether directly or indirectly), without the prior written consent of the Subordinated Agent or (if the

2010 Subordinated Note Issue Date has occurred) each Subordinated Note Trustee:

- (i) make any amendment to the maturity date, repayment profile, currency of payment, interest rate (including methods for its calculation and requirements for payment) or margin applicable to any amount under a Senior Finance Document which is not contemplated by the original form of the Senior Finance Documents;
 - (ii) make any amendment to any provision in a Senior Finance Document:
 - (A) relating to lock up or otherwise imposing restrictions on payments of the Subordinated Debt; or
 - (B) imposing restrictions on payments of Distributions;
 - (iii) for the avoidance of doubt, make any amendment to the definition of any term defined in any Senior Finance Document which is used in any of the provisions referred to in clause 5.10(a)(i) or (ii) (*Amendments and releases of Senior Finance Documents*); or
 - (iv) release any Security, or any asset from any Security, other than:
 - (A) any release which is binding on the Subordinated Creditors under clause 5.4 (*Waivers*) without the consent of the Subordinated Agent or (if the 2010 Subordinated Note Issue Date has occurred) each Subordinated Note Trustee; or
 - (B) on enforcement of the Securities in accordance with this deed.
- (b) The restrictions in clause 5.10(a) (*Amendments and releases of Senior Finance Documents*) do not apply to:
- (i) any technical, procedural or mechanical variations as part of the usual administration of the Senior Finance Documents which are not material; or
 - (ii) other variations which are not materially adverse to the Subordinated Creditors; or
 - (iii) any release of a Security, or asset from a Security, required or permitted by the terms of the Senior Finance Documents.
- (c) Until the end of the Second Subordination Period, Holdco I and Holdco 1a will not make any amendment or variation to any document evidencing the terms of the Shareholder Debt without the consent of the Senior Agent and the Subordinated Agent or (if the 2010 Subordinated Note Issue Date has occurred) each Subordinated Note Trustee.

5.11 Obligations of Senior Creditors

- (a) In exercising their rights in respect of enforcement of the Securities or in exercising any power to direct the Security Trustee under any Senior Finance Document, each Senior Creditor will act in good faith towards the Subordinated Creditors where that is not inconsistent with the best interests of the Senior Creditors and will not cause the Senior Creditors to suffer or incur any greater loss cost or expense than it otherwise would if it did not act in that manner.
- (b) Nothing in this clause obliges a Senior Creditor to consult with or seek the consent of a Subordinated Creditor before exercising any right or power.

5.12 Copies of Documents

- (a) The Obligors must ensure that each Representative of the Subordinated Creditors receives a copy of each Senior Finance Document within a reasonable time after each is entered into. Each Senior Creditor consents to the provision of such copies provided that no pricing is disclosed in relation to any Transactional Facility.
- (b) The Obligors must ensure that each Representative of the Senior Creditors receives a copy of each Subordinated Finance Document within a reasonable time after each is entered into. Each Subordinated Creditor consents to the provision of such copies.

6 Acceleration Rights – Holdco I and Holdco 1a

Prior to the termination of the First Subordination Period and the Second Subordination Period, Holdco I and Holdco 1a may not declare that the Shareholder Debt owed to it, or any part of the Shareholder Debt owed to it, is immediately due and payable or otherwise due and payable.

7 Distribution of proceeds by Security Trustee

The Security Trustee must apply any amounts received by it under this deed and available for distribution in or towards the payment or repayment of the Secured Moneys in the manner set out in the Security Trust Deed.

8 Meetings

- (a) If, at any time during the First Subordination Period, a Senior Event of Default subsists, the Security Trustee shall invite each Representative of a Subordinated Creditor to attend any meeting held between the Senior Creditors and the Security Trustee which is scheduled to involve:
 - (i) presentations by experts or a Borrower or other Obligor;
 - (ii) deliberations or decisions as to an enforcement strategy for the Security; or
 - (iii) deliberations or decisions as to the method of realisation or disposal of any Secured Property,but no Representative of a Subordinated Creditor shall be entitled to remain in attendance during any part of that meeting where the Security Trustee or a Senior Creditor reasonably believes that there is, or is likely to be, a conflict of interest between the Senior Creditors (or any of them) and the Subordinated Creditors (or any of them) including as to:
 - (iv) matters of priority of the Security Beneficiaries under the Security; or
 - (v) considerations of the Subordinated Creditors as a secured class of financiers.
- (b) Any Representative of a Subordinated Creditor may present the Subordinated Creditors' point of view at any such meeting but, subject to the rights of Subordinated Creditors to exercise Acceleration Rights and enforce the Security in accordance with this deed, will not be entitled to vote or otherwise affect any resolution or matter before that meeting and decisions may be made without regard to any Representative of a Subordinated Creditor.

- (c) The Security Trustee shall give each Representative of a Subordinated Creditor a copy of any written notice given to the Senior Creditors by the Security Trustee under the Security Trust Deed concerning any actual Enforcement Action or concerning a Senior Event of Default or Senior Potential Event of Default.
- (d) A Subordinated Creditor must immediately notify the Senior Creditors if it becomes aware of any Subordinated Event of Default or Subordinated Potential Event of Default.
- (e) Nothing in this clause 8 (*Meetings*) requires a Senior Creditor to call any meeting or discuss any matter with any Subordinated Creditor before accelerating any Senior Debt or enforcing any Security.

9 Refinancing and additional debt

9.1 Refinancing of Senior Debt

- (a) Unless all of the Subordinated Debt has been repaid in full or as otherwise agreed by the Subordinated Agent or (if the 2010 Subordinated Note Issue Date has occurred) each Subordinated Note Trustee, an Obligor may only refinance the Senior Debt with the proceeds of any Finance Debt if:
 - (i) the new senior debt facility (**New Senior Facility**) is on terms consistent with this deed and each financier providing the New Senior Facility:
 - (A) by executing a Recognition Deed, assumes the obligations of a “Senior Creditor” under this deed; or
 - (B) enters into a deed with the other Senior Creditors (if any), the Subordinated Creditors and the Obligors substantially on the terms of this deed (or such other terms as may be agreed between that financier and the Subordinated Creditors);
 - (ii) the proceeds of Finance Debt incurred under the New Senior Facility are used only to refinance existing Senior Debt and pay associated fees, costs and expenses;
 - (iii) the aggregate of the Finance Debt to which the Subordinated Debt is subordinated after the refinancing and any Senior Debt not Finally Paid does not exceed an amount equal to the aggregate of:
 - (A) the total principal amount outstanding under the Senior Finance Documents immediately prior to the refinancing;
 - (B) the amount of any undrawn commitments under the Senior Finance Documents immediately prior to the refinancing;
 - (C) all unpaid interest accrued on the Senior Debt to the date of repayment of the Senior Debt; and
 - (D) any costs, fees and expenses (including break costs) associated with the refinancing of the Senior Debt;
 - (iv) the financiers providing the New Senior Facility are not granted any Security Interest or Guarantee by any Obligor or any other person in addition to the Security and Guarantees which are granted to the Subordinated Creditors, unless otherwise agreed by the Subordinated Agent or (if the 2010 Subordinated Note Issue Date has occurred) each Subordinated Note Trustee;

- (v) the lock-up, covenant and default regimes under the New Senior Facility are on the then market terms for such facilities or no more onerous to the Obligors than the regimes existing under the Senior Finance Documents immediately prior to the refinancing;
- (vi) the Obligors give the Subordinated Creditors no less than 30 days' notice of the proposed refinancing date; and
- (vii) without the consent of the relevant Subordinated Creditors, the maturity date of the New Senior Facility is no later than:
 - (A) (for so long as any 2010 Subordinated Notes are outstanding) the maturity date for the 2010 Subordinated Notes; or
 - (B) (from the date that each 2010 Subordinated Note has been repaid, prepaid or otherwise redeemed and for so long as any 2013 Subordinated Notes are outstanding) the maturity date for the 2013 Subordinated Notes,

provided that if the relevant Subordinated Creditors provide such consent, on and from the maturity date of the Subordinated Facility Agreement or (if the 2010 Subordinated Note Issue Date has occurred) the applicable Subordinated Notes Terms of Issue, the relevant Subordinated Notes will rank pari passu with the Senior Debt and the Enforcement Restriction Period will cease.

- (b) Each Subordinated Creditor must give its consent to any New Senior Facility even if clause 9.1(a)(vii) (*Refinancing of Senior Debt*) is not satisfied if each financier providing the New Senior Facility agrees that, on and from the maturity date of that Subordinated Creditor's Subordinated Debt:
 - (i) that Subordinated Creditor's Subordinated Debt will rank pari passu with the Senior Debt and clause 3 (*Subordination – Subordinated Debt*) will not apply to such pari passu ranking Subordinated Debt; and
 - (ii) all the undertakings in this deed given by that Subordinated Creditor in favour of the Senior Creditors which are applicable during an Enforcement Restriction Period will cease.
- (c) Nothing in this clause 9.1 (*Refinancing of Senior Debt*) restricts the entering into, replacement or novation of any Secured Hedging Agreement.

9.2 Refinancing of Subordinated Debt

Unless otherwise agreed by the Senior Agent, an Obligor may only refinance Subordinated Debt if:

- (a) the new subordinated debt facility (which may include a retail note issue) (**New Subordinated Facility**) is on terms consistent with this deed (including the subordination terms applicable to that part of the Subordinated Debt being refinanced (**Refinanced Subordinated Debt**)) and each financier or, in the case of a retail note issue, the note trustee on behalf of the noteholders providing the New Subordinated Facility:
 - (i) by executing a Recognition Deed or otherwise, assumes or becomes bound by the obligations of a "Subordinated Creditor" under this deed; or
 - (ii) enters into or becomes bound by a deed with the Senior Creditors and the Subordinated Creditors whose Secured Moneys are not being refinanced (**Continuing Subordinated Creditor**) under the New Subordinated Facility

and the Obligors substantially on the terms of this deed (or such other terms as may be agreed between that financier (or note trustee, as the case may be), the Senior Creditors and the Continuing Subordinated Creditor);

- (b) the proceeds of Finance Debt under the New Subordinated Facility are used only to refinance existing Subordinated Debt and pay associated fees, costs and expenses;
- (c) the financial accommodation available under the New Subordinated Facility after the refinancing do not exceed an amount equal to the aggregate of:
 - (i) the total principal amount outstanding under the Subordinated Finance Documents immediately prior to the refinancing;
 - (ii) the amount of any undrawn commitments under the Subordinated Finance Documents immediately prior to the refinancing;
 - (iii) all unpaid interest accrued to the date of repayment of the Refinanced Subordinated Debt; and
 - (iv) any costs, fees and expenses (including break costs) associated with the refinancing of the Refinanced Subordinated Debt;
- (d) the cash pay interest under the New Subordinated Facility does not exceed the cash pay interest under the Refinanced Subordinated Debt and the total interest under the New Subordinated Facility does not exceed the total interest under the Refinanced Subordinated Debt;
- (e) the financiers providing the New Subordinated Facility are not granted any Security Interest or Guarantee by any Obligor or any other person in addition to the Security, unless otherwise agreed by the Senior Creditors and the Continuing Subordinated Creditor; and
- (f) the Obligors give the Senior Creditors and the Continuing Subordinated Creditor no less than 30 days' notice of the proposed refinancing date.

9.3 Additional Senior Debt

- (a) Subject to clause 9.3(b) (*Additional Senior Debt*), the Obligors may not agree to increase any commitments with respect to the Senior Debt (including under a New Senior Facility) or incur any Finance Debt that is Senior Debt unless:
 - (i) the relevant Finance Debt is permitted under the Subordinated Facility Agreement (including Finance Debt under an Additional Leasing Facility or an Additional Capex Facility) or (if the 2010 Subordinated Note Issue Date has occurred) each Subordinated Note Terms of Issue;
 - (ii) the additional Finance Debt and/or commitment for the additional Finance Debt, when aggregated with any other Finance Debt or commitment to which this clause 9.3(a)(ii) (*Additional Senior Debt*) has applied, does not exceed \$50,000,000;
 - (iii) the Subordinated Debt ranks pari passu with the additional Senior Debt in excess of the amounts permitted under paragraphs (i) and (ii) above;
 - (iv) the additional Finance Debt is subordinated to the Subordinated Debt on terms reasonably acceptable to the Subordinated Agent or (if the 2010 Subordinated Note Issue Date has occurred) each Subordinated Note Trustee; or

- (v) all of the Subordinated Debt is repaid in full.
- (b) This clause 9.3 (*Additional Senior Debt*) shall not apply to:
 - (i) commitments to provide any new Senior Debt that is to be used to refinance all or part of any existing Senior Debt in accordance with clause 9.1 (*Refinancing of Senior Debt*); or
 - (ii) the provision of any Finance Debt under any Additional Capex Facility (which the Subordinated Creditors acknowledge and agree may be incurred by the Obligors without the need for any consent or approval by the Subordinated Creditors).
- (c) As between the Obligors and the Subordinated Creditors only, nothing in this deed prohibits the Obligors incurring Finance Debt which is Permitted Finance Debt (as defined in the Subordinated Finance Documents) including such Permitted Finance Debt under clause 11.5 (*Finance Debt*) of the Subordinated Facility Agreement.

9.4 Retail notes, bonds

If the New Subordinated Facility includes notes or bonds, the parties agree to negotiate in good faith any necessary amendments to the Intercreditor Deed and Security Trust Deed so as to ensure:

- (a) the subordination of those notes or bonds on terms consistent with this deed; and
- (b) the benefit of the Securities extends to the holders of those notes or bonds,

without the need for all holders of those notes or bonds to execute a Recognition Deed or otherwise directly be a party to the Intercreditor Deed and Security Trust Deed (other than a trustee or representative for the holders of those notes or bonds).

10 Representations and warranties

10.1 Representations

Each party to this deed represents and warrants to each other party that:

- (a) **registration:** it is duly incorporated (or taken to be incorporated) or registered and validly existing in the jurisdiction of its incorporation;
- (b) **corporate power:** it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (c) **authority:** it has full power and authority to enter into and perform its obligations under this deed;
- (d) **authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms; and
- (e) **binding obligations:** this deed constitutes its legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its terms subject to laws generally affecting creditors' rights and to principles of equity.

10.2 Senior Representatives

Each Representative of a Senior Creditor represents and warrants to the other parties to this deed that it has authority to enter into this deed on behalf of and so as to bind itself and that Senior Creditor to this deed.

10.3 Subordinated Representative

Each Representative of a Subordinated Creditor represents and warrants to the other parties to this deed that it has authority to enter into this deed on behalf of and so as to bind itself and that Subordinated Creditor to this deed.

10.4 Survival

The representations and warranties in this clause 10 (*Representations and warranties*) survive the execution of this deed.

11 Undertakings, consents and acknowledgments

11.1 Undertakings, consents and acknowledgments of the Obligors

Unless this deed specifically permits, each Obligor which is a party to this deed:

- (a) consents to this deed and confirms that each of its obligations, liabilities and undertakings under or in respect of the Finance Documents, in accordance with their respective terms, is and will remain in full force and effect despite this deed, and are not discharged, impaired or otherwise affected by any of the provisions of this deed (except as expressly provided in this deed);
- (b) expressly authorises the enforcement of the Finance Documents in the manner provided for in this deed;
- (c) agrees to cooperate in the implementation of this deed;
- (d) agrees not to pay, prepay or repay, or make any distribution in respect of, or on account of, or purchase, redeem or acquire, any of the Subordinated Debt or Shareholder Debt in cash or in kind except in accordance with this deed;
- (e) undertakes to the Senior Creditors and the Subordinated Creditors that no Obligor will take or omit to take any action whereby the ranking of the Senior Debt or the subordination of the Subordinated Debt or Shareholder Debt contemplated by this deed may be impaired;
- (f) must not petition or apply for or vote in favour of any resolution for the liquidation of any Obligor other than as contemplated under this deed;
- (g) must not exercise any right of set-off, counterclaim, abatement, combination or similar right or procedure against a Subordinated Creditor, Holdco 1a or Holdco I or agree to a set-off with a Subordinated Creditor, Holdco 1a or Holdco I or merge or combine any accounts so as directly or indirectly to reduce any Subordinated Debts or Shareholder Debt;
- (h) must not exercise any right or take any other action which would cause any amount to become payable in connection with any Subordinated Finance Document or any document evidencing the terms of the Shareholder Debt; and
- (i) irrevocably waives any rights to challenge or have set aside any arrangement relating to the placing of the proceeds of the enforcement of the Finance

Documents in a suspense account in a manner contemplated by the Senior Finance Documents.

11.2 Rights of Senior Creditors

Nothing in this deed affects or limits any rights or obligations of a Senior Creditor regarding the appropriation or application of money received by it in respect of the Senior Debt, unless done in breach of this deed.

12 Savings provisions

12.1 No impairment

- (a) No Power of the Senior Creditors is at any time or in any way prejudiced or impaired by any act or omission of an Obligor or a Subordinated Creditor under any Finance Document or otherwise in respect of the Senior Debt or the Subordinated Debt.
- (b) This clause 12.1 (*No impairment*) applies regardless of any actual or constructive knowledge of any fact or circumstance of the Senior Creditors.

12.2 Non-avoidance

- (a) Other than pursuant to an express release or discharge or as expressly provided otherwise in this deed, the Powers of the Senior Creditors will not be prejudiced, impaired or adversely affected by, and the obligations and liabilities of each Obligor and each Subordinated Creditor under the Finance Documents will not be released, discharged or otherwise affected by the provisions of this deed or anything which but for this provision might have that effect, including:
 - (i) the grant to any Obligor, any Subordinated Creditor or any other person of any time, waiver, covenant not to sue or other indulgence or any consent or waiver given or not given under or in respect of any Finance Document;
 - (ii) the release (including without limitation a release as part of any novation) or discharge of any Obligor, any Subordinated Creditor or any other person of its obligations under this deed, any other Finance Document or any other agreement or arrangement or of any property from any Security Interest or Guarantee;
 - (iii) the cessation of the obligations, in whole or in part, of any Obligor, any Subordinated Creditor or any other person under any Finance Document or any other document or agreement;
 - (iv) the liquidation of any Obligor, any Subordinated Creditor or any other person or the appointment of a liquidator, receiver, receiver and manager, official manager or other similar officer to any Obligor, any Subordinated Creditor or any other person or to all or any part of the assets of it or any other person;
 - (v) any arrangement, composition or compromise entered into by a Senior Creditor, any Obligor, any Subordinated Creditor or any other person;
 - (vi) any Finance Document or any other document or agreement being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;
 - (vii) any extinguishment, failure, loss, release, discharge, abandonment, impairment, compound, composition or compromise, in whole or in part of any Finance Document or any other document or agreement;

- (viii) any Security Interest or Guarantee being given to a Senior Creditor by any Obligor or any other person;
- (ix) any alteration, amendment, variation, modification, supplement, renewal or replacement of any Finance Document or any other document or agreement;
- (x) any moratorium or other suspension of any Power;
- (xi) any Security Beneficiary exercising or enforcing, attempting to exercise or enforce, delaying, failing or refraining from exercising or enforcing, or being not entitled or unable to exercise or enforce, any Power;
- (xii) any Security Beneficiary obtaining a judgment against any Obligor, any Subordinated Creditor or any other person for the payment of any of the Senior Debt or the Subordinated Debt;
- (xiii) any transaction, agreement or arrangement that may take place with any Security Beneficiary, any Obligor or any other person;
- (xiv) any payment to any Security Beneficiary including any payment which at the payment date or at any time after the payment date is, in whole or in part, illegal, void, voidable, avoided or unenforceable;
- (xv) any failure to give effective notice to any Obligor, any Subordinated Creditor or any other person of any default under any Finance Document or any other document or agreement;
- (xvi) any legal limitation, disability or incapacity of any Obligor, any Subordinated Creditor or of any other person;
- (xvii) any breach of any Finance Document or any other document or agreement;
- (xviii) the acceptance of the repudiation of, or termination of, any Finance Document or any other document or agreement;
- (xix) any part of the Senior Debt or the Subordinated Debt being irrecoverable for any reason;
- (xx) any disclaimer by any Obligor, any Subordinated Creditor or any other person of any Finance Document or any other document or agreement;
- (xxi) any assignment, novation, assumption or transfer of, or other dealing with, any Powers or any other rights or obligations under any Finance Document or any other document or agreement;
- (xxii) the opening of a new account of any Obligor (whether alone or with others) with any Security Beneficiary or any transaction on or relating to the new account;
- (xxiii) any prejudice (including, but not limited to, material prejudice) to any person as a result of:
 - (A) any thing done, or omitted to be done by any Security Beneficiary, any Obligor or any other person;
 - (B) any Security Beneficiary or any other person selling or realising any property the subject of an Security Interest at less than the best price;
 - (C) any failure or neglect by any Security Beneficiary or any other person to recover the Senior Debt or the Subordinated Debt from any Obligor

or any other person or by the realisation of any property the subject of an Security Interest; or

- (D) any other thing;
 - (xxiv) the receipt by any Security Beneficiary of any dividend, distribution or other payment in respect of any liquidation;
 - (xxv) the capacity in which a party executed a Finance Document not being the capacity disclosed to any other party to the Finance Document before execution of the Finance Document;
 - (xxvi) the fluctuation (including, but not limited to, any reduction and subsequent increase) from time to time of all or any part of any of the Senior Debt or the Subordinated Debt, whether by the advance or re-advance of any money, the provision or re-provision of financial accommodation or otherwise;
 - (xxvii) a Security Beneficiary being, or not being, from time to time obliged to:
 - (A) make any advance or provide any other financial accommodation to, at the request of, or for the benefit of any Obligor or any other person;
 - (B) do anything which may cause money to become due by any Obligor or any other person to a Security Beneficiary;
 - (xxviii) all or any part of any of the Senior Debt or the Subordinated Debt being contingent or prospective;
 - (xxix) any other act, omission, matter or thing whatsoever, whether negligent or not.
- (b) Clause 12.2(a) (*Non-avoidance*) applies irrespective of:
- (i) the consent or knowledge or lack of consent or knowledge, of any Security Beneficiary, any Obligor or any other person of any event described in clause 12.2(a) (*Non-avoidance*); or
 - (ii) any rule of law or equity to the contrary.

12.3 Default by a Security Beneficiary

A breach of, or default under, this deed by a Security Beneficiary does not affect any obligation of any Obligor or any other Security Beneficiary to that Security Beneficiary.

12.4 Exclusion of moratorium

To the extent not excluded by law, a provision of any legislation which at any time directly or indirectly:

- (a) lessens or otherwise varies or affects in favour of any Obligor or any Subordinated Creditor any obligations under this deed or any Finance Document; or
- (b) stays, postpones or otherwise prevents or prejudicially affects the exercise by a Security Beneficiary of any Power,

is negated and excluded from this deed and all relief and protection conferred on any Obligor or any Subordinated Creditor by or under that legislation is also negated and excluded.

12.5 Conflict

Where any Power of a Security Beneficiary under any Finance Document is inconsistent with the powers conferred by applicable law then, to the extent not prohibited by that law, the powers conferred by applicable law are regarded as negated or varied to the extent of the inconsistency.

12.6 Rescission of payment

Whenever a claim that all or part of any payment affecting or relating in any way to the Senior Debt or Subordinated Debt is void or voidable or subject to recovery is upheld, conceded or compromised:

- (a) each Senior Creditor immediately becomes entitled against Holdco I, Holdco 1a, each Obligor which is a party to this deed and each Subordinated Creditor to all respective Powers that it would have had if payment of the amount of the Senior Debt which is void or voidable or recoverable or foregone or compromised, had not taken place;
- (b) each Subordinated Creditor immediately becomes entitled against Holdco I, Holdco 1a and each Obligor which is a party to this deed to all respective Powers that it would have had if payment of the amount of the Subordinated Debt which is void or voidable or recoverable or foregone or compromised, had not taken place;
- (c) each Subordinated Creditor, Holdco 1a, Holdco I and each Obligor which is a party to this deed must immediately do everything a Representative of any Senior Creditor requests to restore each Senior Creditor to the position it held with respect to the Subordinated Creditor, Holdco 1a, Holdco I and each such Obligor immediately before any such payment; and
- (d) Holdco I, Holdco 1a and each Obligor which is a party to this deed must immediately do everything the Subordinated Agent or (if the 2010 Subordinated Note Issue Date has occurred) any Subordinated Note Trustee requests to restore each Subordinated Creditor to the position it held with respect to Holdco I, Holdco 1a and each Obligor immediately before any such payment.

13 General

13.1 Notices

Any notice or other communication including any request, demand, consent or approval, to or by a party to this deed must be given in accordance with the notice provisions of the Security Trust Deed.

13.2 Governing law and jurisdiction

- (a) This deed is governed by the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.
- (c) Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (d) Each party irrevocably waives any immunity in respect of its obligations under this deed that it may acquire from the jurisdiction of any court or any legal process for any reason including the service of notice, attachment before judgment, attachment in aid of execution or execution.

- (e) Each Obligor which is not incorporated under the laws of any State or Territory of Australia appoints the Company of Level 43, 101 Collins Street, Melbourne VIC 3000, in relation to proceedings in any State or Territory of Australia as its agent to receive service of any legal proceedings on its behalf without excluding any other means of service permitted by the law of the relevant jurisdiction and agrees failure by the process agent to notify it or any other Obligor of the process will not invalidate the proceedings concerned. The Company irrevocably accepts each such appointment.

13.3 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this deed or any Power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

13.4 Waivers

- (a) Waiver of any right arising from a breach of this deed or of any Power arising upon default under this deed or on the occurrence of a Default must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
 - (i) a right arising from a breach of this deed or on the occurrence of a Default;
or
 - (ii) a Power created or arising upon default under this deed or on the occurrence of a Default,does not result in a waiver of that right or Power.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right or Power arising from a breach of this deed or on a default under this deed or on the occurrence of an Event of Default as constituting a waiver of that right or Power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or Power by that other party.
- (e) This clause may not itself be waived except by writing.

13.5 Variation

- (a) Subject to this clause 13.5(b) (*Variation*), a variation of any term of this deed must be in writing and signed by the parties.
- (b)
 - (i) The Company may effect, on behalf of any Obligor, any variation or waiver permitted by this clause 13.5 (*Variation*) (including by signing any document in connection with the amendment or waiver). Each Obligor irrevocably and unconditionally authorises the Company to do so.
 - (ii) The Security Trustee may sign a variation of any term of this deed on behalf of the Security Beneficiaries where it is permitted to do so in accordance with clause 6 (*Security Trustee's rights and responsibilities*) of the Security Trust Deed or any other provision of a Finance Document.

13.6 Assignment, new Obligors and new Security Beneficiaries

- (a) **Obligors, Holdco 1a and Holdco I:**
- (i) An Obligor must not assign or novate any of its rights or obligations under this deed without the prior written consent of each Security Beneficiary.
 - (ii) During the First Subordination Period, Holdco I and Holdco 1a must not assign or novate any of its rights or obligations under the Shareholder Debt without the prior written consent of the Senior Agent.
- (b) **New Obligors:** If a person who is not already a party to this deed as an Obligor grants a Collateral Security or becomes a “Guarantor” or a “Borrower” under and as defined in a Finance Document, each Obligor must ensure that the person immediately becomes bound by this deed and the Security Trust Deed by executing an Accession Deed (Security Provider).
- (c) **Security Beneficiary:** A Security Beneficiary may (and may only) assign, novate or transfer any of its rights and obligations under this deed or the Finance Documents to a successor under and in accordance with clause 8 (*Changes to Security Beneficiaries and Security Providers*) of the Security Trust Deed.
- (d) **New Security Beneficiary:** A person may become a party to this deed as a Security Beneficiary other than pursuant to an assignment, transfer, novation or disposal under and in accordance with clause 8 (*Changes to Security Beneficiaries and Security Providers*) and (if applicable) clause 1.5 (*Dealings with Representatives*) of the Security Trust Deed. Despite the preceding sentence:
- (i) upon the 2010 Subordinated Note Issue Date occurring and the 2010 Subordinated Note Trustee acceding to this deed on behalf of the 2010 Subordinated Noteholders, each 2010 Subordinated Noteholder from time to time shall be regarded as a ‘Security Beneficiary’ and a ‘Subordinated Creditor’ and is not otherwise required to execute a Recognition Deed; and
 - (ii) upon the 2013 Subordinated Note Issue Date occurring and the 2013 Subordinated Note Trustee acceding to this deed on behalf of the 2013 Subordinated Noteholders, each 2013 Subordinated Noteholder from time to time shall be regarded as a ‘Security Beneficiary’ and a ‘Subordinated Creditor’ and is not otherwise required to execute a Recognition Deed.
- (e) **Security Trustee:** The Security Trustee may assign, novate or transfer any of its rights and obligations under this deed to a successor under and in accordance with clause 7.3 (*Appointment of successor Security Trustee*) of the Security Trust Deed.
- (f) **Senior Agent:** The Senior Agent may assign, novate or transfer any of its rights and obligations under this deed to a successor under and in accordance with clause 23.15 (*Resignation and removal of Senior Agent*) of the Senior Facility Agreement and clause 1.5 (*Dealings with Representatives*) of the Security Trust Deed.
- (g) **Subordinated Agent:** The Subordinated Agent may assign, novate or transfer any of its rights and obligations under this deed to a successor under and in accordance with clause 19.14 (*Resignation and removal of Subordinated Agent*) of the Subordinated Facility Agreement and clause 1.5 (*Dealings with Representatives*) of the Security Trust Deed.

13.7 Further assurances

Each party must, upon request by the Senior Agent or the Subordinated Agent or (if the 2010 Subordinated Note Issue Date has occurred) any Subordinated Note Trustee (in

each case, acting reasonably) do all things and execute all further documents necessary to give full effect to this deed.

13.8 Counterparts

- (a) This deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this deed by signing any counterpart.

13.9 Attorneys

Each of the attorneys executing this deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

13.10 Delivery

For the purposes of section 9 of the Property Law Act 2007 of New Zealand, and without limiting any other mode of delivery, this deed will be delivered by NZ Holdco immediately on the earlier of:

- (a) physical delivery of an original of this deed, executed by NZ Holdco, into the custody of the Security Trustee or the Security Trustee's solicitors; or
- (b) transmission by NZ Holdco or its solicitors (or any other person authorised in writing by NZ Holdco) of a facsimile, photocopied or scanned copy of an original of this deed, executed by NZ Holdco, to the Security Trustee or the Security Trustee's solicitors.

Schedule 1 — Dictionary

1 Dictionary and interpretations

1.1 Dictionary

2010 Subordinated Note means any subordinated secured note issued by the Subordinated Borrower as contemplated by the 2010 Subordinated Note Trust Deed (including the 2010 Subordinated Note Terms of Issue) on 17 December 2010, the aggregate proceeds of which equalled \$200,000,000.

2010 Subordinated Note Issue Date means 17 December 2010, being the date on which the Subordinated Debt under the Subordinated Facility Agreement was repaid in full using the Takeout Proceeds.

2010 Subordinated Note Terms of Issue means the terms and conditions of the issue of the 2010 Subordinated Notes as set out in the 2010 Subordinated Note Trust Deed.

2010 Subordinated Note Trust means the trust established by the 2010 Subordinated Note Trust Deed.

2010 Subordinated Note Trust Deed means the trust deed dated [3 November 2010] entered into by the 2010 Subordinated Notes Trustee and the Subordinated Borrower in connection with the refinancing of the Subordinated Debt under the Subordinated Facility Agreement.

2010 Subordinated Notes Trustee means any trustee (including any successor or replacement trustee) for the 2010 Subordinated Noteholders appointed under the 2010 Subordinated Note Trust Deed who also becomes a party to this deed in its capacity as note trustee by executing a Recognition Deed.

2010 Subordinated Noteholder means any person whose name is for the time being registered in the note register for a 2010 Subordinated Note as the holder of that 2010 Subordinated Note.

2013 Subordinated Note means any subordinated secured note issued by the Subordinated Borrower as contemplated by the 2013 Subordinated Note Trust Deed (including the 2013 Subordinated Note Terms of Issue) the aggregate proceeds of which, together with all other such subordinated secured notes, are used to refinance Senior Debt.

2013 Subordinated Note Issue Date means the date on which the 2013 Subordinated Notes are issued in accordance with the applicable Subordinated Note Funding Documents.

2013 Subordinated Note Terms of Issue means the terms and conditions of the issue of the 2013 Subordinated Notes as set out in the 2013 Subordinated Note Trust Deed.

2013 Subordinated Note Trust means the trust established by the 2013 Subordinated Note Trust Deed.

2013 Subordinated Note Trust Deed means the trust deed to be entered into on or about [●] 2013 by the 2013 Subordinated Notes Trustee and the Subordinated Borrower.

2013 Subordinated Notes Trustee means any trustee (including any successor or replacement trustee) for the 2013 Subordinated Noteholders appointed under the 2013 Subordinated Note Trust Deed who also becomes a party to this deed in its capacity as note trustee by executing a Recognition Deed.

2013 Subordinated Noteholder means any person whose name is for the time being registered in the note register for a 2013 Subordinated Note as the holder of that 2013 Subordinated Note.

Acceleration Rights means a Security Beneficiary's rights under any Finance Documents to which it is a party to declare, or to instruct or request the Security Trustee or its Representative (as the case may be) to declare, by notice to any Obligor that the Secured Moneys owing to it, or any part of them, are immediately due and payable.

Accession Deed (Security Provider) has the same meaning given in the Security Trust Deed.

Accounting Standards means:

- (a) in the case of each Australian Group Member, the Australian equivalent to International Financial Reporting Standards, or in the absence of such standards, generally accepted accounting principles in Australia; and
- (b) in the case of any other Group Member, the equivalent to the International Financial Reporting Standards in the jurisdiction of incorporation of that Group Member, or in the absence of such standards, generally accepted accounting principles in the jurisdiction of incorporation of that Group Member.

Additional Capex Facility has the meaning given in the Senior Facility Agreement.

Additional Leasing Facility has the meaning given in the Senior Facility Agreement.

Attorney means an attorney appointed under a Security.

Australian Dollars and A\$ means the lawful currency of the Commonwealth of Australia.

Australian Group Member means each Group Member incorporated in Australia.

Bidco means Asia Pacific Healthcare Group Pty Limited ACN 145 126 012.

Borrower means:

- (a) a Senior Borrower; or
- (b) the Subordinated Borrower.

Business Day means a day on which banks are open for business in Sydney, Melbourne and Hong Kong (excluding a Saturday, Sunday or public holiday).

Collateral Security has the meaning given in the Security Trust Deed.

Company means Healthscope Finance Pty Limited (formerly APHG Holdings 3 Pty Limited and Baypower Enterprises Pty Limited) ACN 145 126 067.

Compliance Certificate has the meaning given in clause 1.11 (*Compliance Certificate*).

Continuing Subordinated Creditor has the meaning given in clause 9.2 (*Refinancing of Subordinated Debt*).

Controller means a controller as defined in section 9 of the Corporations Act, but as if 'charge' included any Security, and includes any Receiver.

Core Business means the provision of hospital and other medical services including radiology, pathology, day surgery, diagnostics, medical centre and ancillary or related healthcare services (but excluding aged care and childcare centres).

Corporations Act means the *Corporations Act 2001* (Cth).

Debt Service Cover Ratio has the meaning given in the Senior Facility Agreement.

Default means:

- (a) an Event of Default; or
- (b) a Potential Event of Default.

Default Rate means 2% per annum.

Distribution means:

- (a) any dividend, charge, interest, fee, payment or other distribution (whether cash or assets) or redemption, repurchase, defeasance, retirement or repayment on or in respect of any share capital of an Obligor; and
- (b) any interest payment, any repayment or prepayment of any amount of principal or any other payment in respect of any Shareholder Debt or any other liability of any Group Member to any holder of shares in, or subordinated loans owed to, Holdco I or Holdco 1a (excluding any Subordinated Instrument (as defined in the Senior Facility Agreement)).

Enforcement Action means any action of the Security Trustee to appoint a Controller under any Security, to declare any Security enforceable or to otherwise exercise any Power to enforce any Security.

Enforcement Restriction Period means the period from the date of this deed until the earlier of:

- (a) the date on which the Senior Debt has been Finally Paid; and
- (b) the maturity date of the Subordinated Debt, or if that maturity date is earlier than six months after the latest maturity date of the Senior Debt under the Senior Facility Agreement, the date six months after the latest maturity date of the Senior Debt under the Senior Facility Agreement.

Event of Default means:

- (a) a Senior Event of Default; or
- (b) a Subordinated Event of Default.

Finally Paid means in respect of any Secured Moneys or any other monetary liability, satisfaction of the following conditions:

- (a) payment or satisfaction in full; and
- (b) at that time, the person to whom those Secured Moneys or other liability are payable (or were payable prior to payment or satisfaction in full) has no reason to

believe (acting reasonably and in good faith) that any person, including an Obligor, liquidator, provisional liquidator, administrator, official manager, trustee in bankruptcy, receiver, receiver and manager, administrative receiver, statutory manager, compulsory manager, other Controller or similar official, is reasonably likely to exercise a right to recoup or claim repayment of any part of the amount paid or satisfied, whether under the laws of preferences, voidable transactions, fraudulent dispositions or otherwise.

Finance Debt means any monetary liability or indebtedness (whether present or future, actual or contingent) for or in respect of financial accommodation, including:

- (a) moneys borrowed under an advance or loan or raising amounts under or in connection with any bond, debenture, note, loan stock or similar instrument;
- (b) drawing, accepting, endorsing, discounting, collecting or paying a bill of exchange, cheque or other negotiable instrument;
- (c) any amount payable in connection with the redemption of redeemable preference shares issued by that person;
- (d) any amount due under any agreement for managing or hedging currency and/or interest rate and/or commodity risk, provided that only where such agreement provides for netting to occur, this paragraph (d) shall include the net amount of the payment obligation outstanding from the relevant Group Member thereunder after such netting off has occurred;
- (e) entering into any agreement or transaction of any kind as a result of which a debt or liability or a contingent debt or liability arises (including any Finance Lease or hire purchase agreement and acquisition of assets where payment is deferred for more than 180 days);
- (f) receivables sold or discounted (except the Receivables Purchase Facility or any replacement of that facility or and other receivables to the extent they are sold on a non-recourse basis);
- (g) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby letter of credit or other instrument issued by a bank or financial institution in respect of financial liabilities and for which there is cash cover but not in respect of trade or other performance obligations;
- (h) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (g) above; or
- (i) forbearing to require immediate payment of any moneys owing or contingently owing on any account, for any reason whatsoever,

but for the avoidance of doubt excludes any Operating Lease or any liabilities in respect of medical malpractice.

Finance Document means:

- (a) in respect of any Senior Creditor, any Senior Finance Document; or
- (b) in respect of any Subordinated Creditor, any Subordinated Finance Document.

Finance Lease means a Lease constituting a finance lease or capitalised lease under the Accounting Standards.

Financial Close means the date on which all conditions precedent under the Senior Facility Agreement and under the Subordinated Facility Agreement are satisfied (or waived by the Senior Agent or Subordinated Agent, as the case may be) and the first Funding Date (as defined in the relevant Finance Document) under a facility occurs.

First Subordination Period means the period from the date of this deed until the Senior Debt has been Finally Paid.

Government Agency means any government or any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Group has the meaning given to it in the Finance Documents.

Group Member means a member of the Group.

Guarantee has the meaning given in the Security Trust Deed.

Holdco 2a means Healthscope Pathology Holdings No. 2 Pty Limited (formerly APHG No.2 Holdings 2 Pty Limited) ACN 146 342 832.

Holdco 2a Shareholder Debt means any financial indebtedness (including under any guarantee or indemnity) owed by Holdco 2a to Holdco 1a, and includes the loan from Holdco 1a to Holdco 2a evidenced by the loan agreement dated on or after the date of this deed between Holdco 1a and Holdco 2a.

Holdco II means Healthscope Hospitals Holdings No. 2 Pty Limited (formerly APHG Holdings 2 Pty Limited and Greenline Nominees Pty Limited) ACN 145 126 094.

Holdco II Shareholder Debt means any financial indebtedness (including under any guarantee or indemnity) owed by Holdco II to Holdco I, and includes the loan from Holdco I to Holdco II evidenced by the loan agreement dated on or after the date of this deed between Holdco I and Holdco II.

Insolvency Event means, in respect of a corporation, any of the following events (other than for the purposes of a solvent reconstruction, merger or amalgamation which has the prior written consent of each Representative of the Senior Creditors and each Representative of the Subordinated Creditors (in each case such consent not to be unreasonably withheld):

- (a) the corporation is dissolved (whether pursuant to Chapter 5A of the Corporations Act or otherwise);
- (b) a Controller, liquidator, provisional or interim liquidator, receiver, statutory manager or administrator is appointed in respect of the corporation or any of its assets;
- (c) an application is made to a court, a meeting is convened or a resolution is passed for the corporation to be wound up or dissolved or for the appointment of a Controller, liquidator, provisional or interim liquidator, receiver, statutory manager or administrator to the corporation or any of its assets and such application is not withdrawn or dismissed within ten Business Days;
- (d) the corporation:
 - (i) resolves to enter into, or enters into, a scheme of arrangement, a deed of company arrangement, compromise or composition with its creditors or an assignment for their benefit;
 - (ii) proposes or is subject to a moratorium of its debts; or

- (iii) takes proceedings or actions similar to those mentioned in this paragraph as a result of which the corporation's assets are, or are proposed to be, submitted to the control of its creditors;
- (e) the corporation seeks or obtains protection from its creditors under any statute or any other law;
- (f) the corporation is unable to pay all of its debts as and when they become due and payable, is insolvent within the meaning of section 95A of the Corporations Act or any analogous circumstances arises under any other statute or law;
- (g) any attachment, distress, execution or other process is made or levied against any asset of the corporation in an amount in excess of A\$5,000,000 (or its equivalent in another currency) and is not withdrawn, stayed or dismissed within ten Business Days;
- (h) if the corporation is declared 'at risk' pursuant to the Corporations (Investigation and Management) Act 1989 of New Zealand; or
- (i) an event occurs in relation to the corporation which is analogous to anything referred to above or which has a substantially similar effect.

Lease means a lease, bailment, charter, hire purchase, hiring agreement or any other agreement under which any property is or may be used or operated by a person other than the owner.

New Senior Facility has the meaning given in clause 9.1(a)(1) (*Refinancing of Senior Debt*).

New Subordinated Facility has the meaning given in clause 9.2(a) (*Refinancing of Subordinated Debt*).

NZ Holdco means APHG NZ Investments Limited (company number 3135205).

Obligor means:

- (a) an Initial Obligor;
- (b) an "Additional Borrower" as defined in the Senior Facility Agreement;
- (c) an "Additional Guarantor" as defined in the Senior Facility Agreement; or
- (d) any other Security Provider (as defined in the Security Trust Deed),

or any one or more of them as the context requires.

Operating Lease means a Lease constituting an operating lease under the Accounting Standards.

Payment Blockage has the meaning given in clause 3.3(a) (*Payment Blockage*).

Permitted Disposal has the meaning given in a Finance Document.

Permitted Payment means:

- (a) in respect of any Subordinated Creditor, a payment permitted under clause 3.2(a) (*Permitted payments*); or

- (b) in respect of Holdco I or Holdco 1a, a payment permitted under clause 4.2 (*Permitted payments*).

Potential Event of Default means

- (a) a Senior Potential Event of Default; or
(b) a Subordinated Potential Event of Default.

Power means any right, power, authority, discretion or remedy conferred on a Security Beneficiary by any of the Finance Documents to which it is a party or of which it has the benefit or by any applicable law.

Receivables Purchase Facility has the meaning given in the Senior Facility Agreement.

Receiver means has the same meaning given in the Security Trust Deed.

Recognition Deed means has the same meaning given in the Security Trust Deed.

Refinanced Subordinated Debt has the meaning given in clause 9.2(a) (*Refinancing of Subordinated Debt*).

Related Body Corporate has the meaning given in the Security Trust Deed.

Representative has the meaning given in the Security Trust Deed.

Sale Company has the meaning given in clause 5.5(a) (*Deemed release of obligations*).

Sale Group has the meaning given in clause 5.5(a) (*Deemed release of obligations*).

Sale Group Member has the meaning given in clause 5.5(a) (*Deemed release of obligations*).

Second Subordination Period means the period from the day after the last day of the First Subordination Period until the Subordinated Debt has been Finally Paid.

Secured Hedge Counterparty has the meaning given to it in the Security Trust Deed.

Secured Hedging Agreement has the meaning in the Security Trust Deed.

Secured Moneys has the meaning given to it in the Security Trust Deed.

Secured Property means any property subject to a Security.

Security has the meaning given in the Security Trust Deed.

Security Beneficiary means:

- (a) any Senior Creditor;
(b) any Subordinated Creditor,

or any one or more of them as the context requires.

Security Interest has the meaning given in the Security Trust Deed.

Security Trust means the trust created by the Security Trust Deed known as the 'Gibbs Security Trust'.

Security Trust Deed means the deed entitled “Security Trust Deed” dated on or about the date of this deed among each Initial Obligor, Security Trustee and others constituting the “Gibbs Security Trust”.

Senior Borrower means any “Borrower” as defined in the Senior Facility Agreement.

Senior Creditor means:

- (a) any Initial Senior Creditor; and
- (b) each other Senior Creditor under, and as defined in, the Security Trust Deed.

Senior Debt means the “Senior Secured Moneys” as defined in the Security Trust Deed.

Senior Event of Default means an Event of Default (however so described) under the Senior Finance Documents.

Senior Facility Agreement means the agreement entitled “Senior Syndicated Facility Agreement” dated on or about the date of this deed among each Initial Obligor, the Senior Agent, the Security Trustee, the Initial Senior Creditors and others.

Senior Finance Document has the meaning in the Security Trust Deed.

Senior Potential Event of Default means a Potential Event of Default (however so described) under the Senior Finance Documents.

Shareholder Debt means the Holdco II Shareholder Debt and the Holdco 2a Shareholder Debt.

Subordinated Borrower means the Company or, after the Subordinated Note Issue Date, any wholly-owned subsidiary of the Company which issues Subordinated Notes.

Subordinated Creditor means:

- (a) any Initial Subordinated Creditor; and
- (b) each other Subordinated Creditor under, and as defined in, the Security Trust Deed.

Subordinated Debt means the “Subordinated Secured Moneys” as defined in the Security Trust Deed.

Subordinated Event of Default means an Event of Default (however so described) under the Subordinated Finance Documents.

Subordinated Facility Agreement means the agreement entitled “Subordinated Syndicated Bridge Facility Agreement” dated on or about the date of this deed among each Initial Obligor, the Subordinated Agent and others.

Subordinated Finance Document means:

- (a) a ‘Subordinated Finance Document’ as defined in the Security Trust Deed; or
- (b) any Subordinated Note Funding Document.

Subordinated Note means:

- (a) any 2010 Subordinated Note; and

(b) on and from the 2013 Subordinated Note Issue Date, any 2013 Subordinated Note.

Subordinated Note Finance Party means a Subordinated Note Trustee or a Subordinated Noteholder.

Subordinated Note Funding Document means:

- (a) the Security Trust Deed;
- (b) this deed;
- (c) any Subordinated Note Trust Deed;
- (d) a Subordinated Note;
- (e) any Subordinated Note Terms of Issue;
- (f) any Subordinated Note Guarantee;
- (g) any other document or agreement relating to the issue of, or establishing the terms of, the Subordinated Notes;
- (f) any other document or agreement entered into for the purposes of amending or novating any of the above, except to the extent prohibited by this deed or the Security Trust Deed.

Subordinated Note Guarantee means any guarantee and indemnity of any of the Subordinated Note Secured Moneys which is granted by an Obligor in favour of a Subordinated Note Trustee and each relevant Subordinated Noteholder from time to time.

Subordinated Note Issue Date means:

- (a) the 2010 Subordinated Note Issue Date; or
- (b) the 2013 Subordinated Note Issue Date.

Subordinated Note Secured Moneys means that part of the Secured Moneys owing to, or incurred by or on account of, any one or more of the Subordinated Note Finance Parties or the Security Trustee (on behalf of one or more of the Subordinated Note Finance Parties) under or in relation to the Subordinated Note Funding Documents.

Subordinated Note Terms of Issue means:

- (a) the 2010 Subordinated Note Terms of Issue; and
- (b) on and from the 2013 Subordinated Note Issue Date, the 2013 Subordinated Note Terms of Issue,

or any one of them as the context requires.

Subordinated Note Trust means:

- (a) the 2010 Subordinated Note Trust; and
- (b) on and from the 2013 Subordinated Note Issue Date, the 2013 Subordinated Note Trust,

or any one of them as the context requires.

Subordinated Note Trust Deed means:

- (c) the 2010 Subordinated Note Trust Deed; and
- (d) on and from the 2013 Subordinated Note Issue Date, the 2013 Subordinated Note Trust Deed,

or any one of them as the context requires.

Subordinated Note Trustee means:

- (a) the 2010 Subordinated Notes Trustee; and
- (b) on and from the 2013 Subordinated Note Issue Date, the 2013 Subordinated Notes Trustee,

or any one of them as the context requires.

Subordinated Noteholder means:

- (a) any 2010 Subordinated Noteholder; and
- (b) on and from the 2013 Subordinated Note Issue Date, any 2013 Subordinated Noteholder,

or any one or more of them as the context requires.

Subordinated Potential Event of Default means a Potential Event of Default (however so described) under the Subordinated Finance Documents.

Subsidiary means a subsidiary as defined in section 46 of the Corporations Act.

Takeout Proceeds means the proceeds of any New Subordinated Facility (including any capital markets or note issuance) which is incurred by an Obligor to refinance all or part of the Subordinated Debt under the Subordinated Facility Agreement (including accrued cash pay and PIK interest thereon) and pay associated fees, costs and expenses.

Taxes means charges, deductions, duties (including stamp duty, financial institutions duty, transaction duty and bank account debt tax), fees, imposts, levies, taxes (including any consumption tax, goods and services tax and value added tax) and withholdings (together with any interest, penalties, fines and expenses in connection with any of them) and **Tax** has a corresponding meaning.

Transactional Facility has the meaning given in the Security Trust Deed.

1.2 Interpretation

In this deed, headings and bold type are for convenience only and do not affect the interpretation of this deed and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;

- (d) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually, but an agreement, undertaking, representation or warranty by a Security Beneficiary binds that Security Beneficiary individually only;
- (e) any agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (f) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (g) a reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(g) (*Interpretation*) implies that performance of part of an obligation constitutes performance of the obligation;
- (h) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to, this deed and a reference to this deed includes any attachment, exhibit and schedule;
- (i) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (j) a reference to a document includes all amendments (however fundamental and including any increase in any existing facility, or any new facility, under the Senior Finance Documents or the Subordinated Finance Documents) or supplements to, or replacements or novations of, that document where effected in accordance with the Finance Documents;
- (k) a reference to a party to a document includes that party's successors and permitted assigns;
- (l) a reference to an agreement other than this deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (m) a reference to an asset includes all property of any nature, including, but not limited to, a business, and all rights, revenues and benefits;
- (n) a reference to **liquidation** includes official management, statutory management, appointment of an administrator or receiver, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;
- (o) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;
- (p) no provision of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision;
- (q) a reference to a body, other than a party to this deed (including an institute, association or authority), whether statutory or not:
 - (i) which ceases to exist; or

- (ii) whose powers or functions are transferred to another body,
is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (r) a Senior Event of Default or a Senior Potential Event of Default with respect to any Senior Finance Document **subsists** or **continues** until waived in writing by the Senior Agent or remedied;
- (s) a Subordinated Event of Default or a Subordinated Potential Event of Default with respect to any Subordinated Finance Document **subsists** or **continues** until waived in writing by the Subordinated Agent or (if the 2010 Subordinated Note Issue Date has occurred) each Subordinated Note Trustee or remedied;
- (t) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually, but an agreement, undertaking, representation or warranty by a Security Beneficiary binds that Security Beneficiary individually only;
- (u) any agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (v) references to time are to Sydney, Australia time;
- (w) specifying anything in this deed after the words '**includes**' or '**for example**' or similar expressions does not limit what else is included unless there is express wording to the contrary;
- (x) where it relates to a Dutch entity, a reference to:
 - (i) a winding up, administration or dissolution includes a Dutch entity being declared bankrupt (*failliet verklaard*) or dissolved (*ontbonden*);
 - (ii) a moratorium includes *surséance van betaling* and granted a moratorium includes *surséance verleend*;
 - (iii) insolvency includes a bankruptcy, moratorium and emergency regulation (*noodregeling*);
 - (iv) a trustee in bankruptcy includes a *curator*;
 - (v) an administrator includes a *bewindvoerder*;
 - (vi) "security right" includes any mortgage (*hypotheek*), pledge (*pandrecht*), financial collateral agreement (*financiële zekerheidsovereenkomst*), retention of title arrangement (*eigendomsvoorbehoud*), right of retention (*recht van retentie*), right to reclaim goods (*recht van reclame*), and, in general, any right in rem (*beperkt recht*), created for the purpose of granting security (*goederenrechtelijke zekerheid*);
 - (vii) an attachment includes a *beslag*; and
 - (viii) a subsidiary includes a *dochtermaatschappij* as defined in Article 2:24a of the Dutch Civil Code; and
- (y) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day.

Schedule 2 — Initial Obligors

Name	ACN	Notice Details
Healthscope Hospitals Holdings No. 2 Pty Limited (formerly APHG Holdings 2 Pty Limited and Greenline Nominees Pty Limited)	145 126 094	Address: Level 1, 312 St Kilda Road, Melbourne VIC 3004 Attention: Director / Company Secretary Facsimile: +61 3 9926 7599
Healthscope Finance Pty Limited (formerly APHG Holdings 3 Pty Limited and Baypower Enterprises Pty Limited)	145 126 067	
Asia Pacific Healthcare Group Pty Limited	145 126 012	
Healthscope Pathology Holdings No. 2 Pty Limited (formerly APHG No.2 Holdings 2 Pty Limited)	146 342 832	
APHG No.2 Holdings 3 Pty Limited	146 342 823	
APHG No.2 Pty Limited	146 342 814	
CT HSP Holdings (Dutch) B.V.	No. 34308383	
APHG NZ Investments Limited	No. 3135205	

Schedule 3 — Initial Senior Creditors

Name	ABN/ACN/ARBN	Lending Office and Notice Details
Australia and New Zealand Banking Group Limited	ABN 11 005 357 522	Address: Level 1 20 Martin Place Sydney NSW 2000 Attention: Evy Slamet Director IRA Diversified Ind NSW Facsimile: +61 2 9227 1631
Bank of America, N.A., Sydney Branch	ABN 51 064 874 531	Address: Level 64 MLC Centre 19 Martin Place Sydney NSW 2000 <i>For loan administration matters:</i> Attention: Phil Katipunan Facsimile: +61 2 9221 5781 <i>For credit matters:</i> Attention: John Penny Facsimile: +61 2 9221 1023
Barclays Bank PLC	ABN 86 062 449 585	<i>For non-fiscal matters (information/waivers, etc)</i> Address: Level 42 225 George Street Sydney NSW 2000 Attention: Richard Satchwell / Duncan Connellan Facsimile: +61 2 9334 6091 Address: 42/F Cheung Kong Center 2 Queen's Road Central HK Attention: Head of Loan Transaction Management Facsimile: +852 2903 2395 <i>For fiscal matters (utilisation, payments, rate setting etc)</i> Address: Level 42 225 George Street Sydney NSW 2000 Attention: Adrian Day/ Mark Kirkham Facsimile: +61 2 9334 6090
BNP Paribas	ABN 23 000 000 117	<i>For lending office and loan administration matters:</i> Address: Level 4 60 Castlereagh Street Sydney NSW 2000 Attention: Loans Administration / Mark Hutchinson Facsimile: +61 2 9006 9062 / +61 2 9221 8005 <i>For credit matters:</i> Address: 63/F Two International Finance Centre, 8 Finance Street, Central Hong Kong

Name	ABN/ACN/ARBN	Lending Office and Notice Details
		Attention: Natalie Rie / Mike Chan Facsimile: +852 2970 0188
Commonwealth Bank of Australia	ABN 48 123 123 124	Address: Level 14 385 Bourke Street Melbourne VIC 3000 Attention: John Baxter Facsimile: +61 3 9675 7288
Credit Agricole CIB Australia Limited	ABN 32 002 540 409	Address: Level 22 Grosvenor Place 225 George Street Sydney NSW 2000 Attention: Stephen Brimo / Andrew Wheeler / Simon Flint Facsimile: +61 2 9252 4691
Credit Suisse AG, Sydney Branch	ABN 17 061 700 712	Address: Level 41 101 Collins Street Melbourne VIC 3000 Attention: Malcolm White Facsimile: +61 3 9914 1822
Deutsche Bank AG, Sydney Branch	ABN 13 064 165 162	Address: Deutsche Bank Place Level 8 Cnr Phillip & Hunter Streets Sydney NSW 2000 Attention: Kendro Andonovski / Trevor Dutton Facsimile: +61 2 8258 2224
The Hongkong and Shanghai Banking Corporation Limited	ABN 65 117 925 970	Address: Level 32 580 George Street Sydney NSW 2000 Attention: Greg Davey Relationship Manager Facsimile: +61 2 9006 5777 Address: Level 17 HSBC Main Building 1 Queens Road Central Hong Kong Attention: Anthony Yap Facsimile: +852 3409 1711
Macquarie Bank Limited	ABN 46 008 583 542	Address: Level 12 1 Martin Place Sydney NSW 2000 Attention: Phil Castro Facsimile: +61 2 8232 6013
Mizuho Corporate Bank Ltd., Sydney Branch	ABN 83 099 031 106	Address: Level 33 60 Margaret Street Sydney NSW 2000 Attention: Neil Leow / Therese Ngo Facsimile: +61 2 8273 3999
Natixis, Singapore Branch	Company no. T00FC5877L	Address: 50 Raffles Place 41-01 Singapore Land Tower 048623 Singapore Attention: Pauline Seh CC: Jacques Brault Facsimile: +65 6224 8651 / +61 2 8063 1733
SGBT Asset Based Funding S.A.		Address: 11, Bld Prince Henri Luxembourg Attention: Franck Robert / Claire Ponsot / Adrien Felden

Name	ABN/ACN/ARBN	Lending Office and Notice Details
Société Générale, Hong Kong Branch		Facsimile: +352 47 93 11 50 89 Address: Level 38 Three Pacific Place 1 Queen's Road East Hong Kong Attention: Kenny Chan / Elaine Tsang Asia Loan Operation Centre Facsimile: +852 2868 1874
Sumitomo Mitsui Banking Corporation, Sydney Branch	ARBN 114 053 459	Address: Level 35 The Chifley Tower 2 Chifley Square Sydney NSW 2000 Attention: Muriel Leung / Robert Nabong Facsimile: +61 2 9376 1863
UBS AG, Australia Branch	ABN 47 088 129 613	Address: Level 16 The Chifley Tower 2 Chifley Square Sydney NSW 2000 Attention: Luke Goldsworthy / Celle Raguine Facsimile: +61 2 9324 3170
United Overseas Bank Limited, Labuan Branch	Licensed Labuan Bank No. 940033 C	Address: Level 6A Main Office Tower Financial Park Labuan Complex Jalan Merdeka 87000 Labuan F.T. Malaysia Attention: Winston LAI / Tak Kong / ONG Chong Weoi Facsimile: +6 087 424 389 / +603 2693 9266
Westpac Banking Corporation	ABN 33 007 457 141	Address: Level 3 Westpac Place 275 Kent Street Sydney NSW 2000 Attention: Tony Cox Facsimile: +61 2 8254 6935

Schedule 4 — Initial Subordinated Creditors

Name	ABN/ACN/ARBN	Notice Details
Carlyle HSP Partners, L.P.		<p>Address: Suite 1, Level 41 Australia Square 264 George Street Sydney NSW 2000</p> <p>Attention: Simon Moore</p> <p>Facsimile: +61 2 9270 3520</p>
TPG FOF VI SPV, L.P.		<p>Address: Legal Department 301 Commerce Street, Suite 3300, Fort Worth, Texas 76102, USA</p> <p>Attention: Ronald Cami</p> <p>Telephone: 1-817-871-4000</p> <p><i>With a copy to:</i> Address: TPG Capital (Australia) Pty Ltd Level 31, 101 Collins Street, Melbourne 3000</p> <p>Attention: Simon Harle</p> <p>Facsimile: +61 3 9663 7005</p>
TPG Asia V Gibbs Limited		<p>Address: Legal Department 301 Commerce Street, Suite 3300, Fort Worth, Texas 76102, USA</p> <p>Attention: Ronald Cami</p> <p>Telephone: 1-817-871-4000</p> <p><i>With a copy to:</i> Address: TPG Capital (Australia) Pty Ltd Level 31, 101 Collins Street, Melbourne 3000</p> <p>Attention: Simon Harle</p> <p>Facsimile: +61 3 9663 7005</p>
TPG VI Gibbs Limited		<p>Address: Legal Department 301 Commerce Street, Suite 3300, Fort Worth, Texas 76102, USA</p> <p>Attention: Ronald Cami</p> <p>Telephone: 1-817-871-4000</p> <p><i>With a copy to:</i> Address: TPG Capital (Australia) Pty Ltd Level 31, 101 Collins Street, Melbourne 3000</p> <p>Attention: Simon Harle</p> <p>Facsimile: +61 3 9663 7005</p>

Execution page

Executed as a deed.

HOLDCO I

Signed, sealed and delivered for **Healthscope
Hospitals Holdings Pty Limited** under
power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness

Name of attorney (print)

HOLDCO 1a

Signed, sealed and delivered for **Healthscope Pathology Holdings Pty Limited** under power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness

Name of attorney (print)

INITIAL OBLIGORS

Signed, sealed and delivered for **Healthscope Finance Pty Limited** under power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signed, sealed and delivered for **APHG Holdings 2 Pty Limited** under power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signed, sealed and delivered for **Asia Pacific
Healthcare Group Pty Limited** under power
of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signed, sealed and delivered for **Healthscope
Pathology Holdings No. 2 Pty Limited**
under power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness

Name of attorney (print)

Signed, sealed and delivered for **APHG No.2 Holdings 3 Pty Limited** under power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness

Name of attorney (print)

Signed, sealed and delivered for **APHG No.2
Pty Limited** under power of attorney in the
presence of:

Signature of witness

Signature of attorney

Name of witness

Name of attorney (print)

Signed, sealed and delivered for **CT HSP Holdings (Dutch) B.V.** under power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness

Name of attorney (print)

Signed, sealed and delivered for **APHG NZ Investments Limited** under power of attorney
in the presence of:

Signature of witness

Signature of attorney

Name of witness

Name of attorney (print)

INITIAL SENIOR CREDITORS

Signed, sealed and delivered for **Australia and
New Zealand Banking Group Limited**
under power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signed, sealed and delivered for **Bank of America, N.A., Sydney Branch** by its authorised signatory in the presence of:

Signature of witness

Signature of authorised signatory

Name of witness (print)

Name of authorised signatory (print)

Signed, sealed and delivered for **Barclays Bank PLC** by its authorised signatory in the presence of:

Signature of witness

Signature of authorised signatory

Name of witness (print)

Name of authorised signatory (print)

Signed, sealed and delivered for **BNP Paribas**
by its authorised signatories:

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory (print)

Name of authorised signatory (print)

Signed, sealed and delivered for
Commonwealth Bank of Australia under
power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signed, sealed and delivered for **Credit Agricole CIB Australia Limited** under power of attorney dated 17 September 2010 in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signed, sealed and delivered for **Credit Suisse
AG, Sydney Branch** by its authorised
signatories:

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory (print)

Name of authorised signatory (print)

Signed, sealed and delivered for **Deutsche Bank AG, Sydney Branch** under power of attorney in the presence of:

Signature of attorney

Signature of attorney

Name of attorney (print)

Name of attorney (print)

Signed, sealed and delivered for **The Hongkong and Shanghai Banking Corporation Limited** under power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signed, sealed and delivered for **Macquarie Bank Limited** under power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signed, sealed and delivered for **Mizuho Corporate Bank Ltd., Sydney Branch** by its authorised signatory in the presence of:

Signature of witness

Signature of authorised signatory

Name of witness (print)

Name of authorised signatory (print)

Signed, sealed and delivered for **Natixis, Singapore Branch** by its authorised signatories:

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory (print)

Name of authorised signatory (print)

Signed, sealed and delivered for **SGBT Asset Based Funding S.A.** under power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signed, sealed and delivered for **Société Générale, Hong Kong Branch** under power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signed, sealed and delivered for **Sumitomo Mitsui Banking Corporation, Sydney Branch** under power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signed, sealed and delivered for **UBS AG,**
Australia Branch by its authorised
signatories:

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory (print)

Name of authorised signatory (print)

Signed, sealed and delivered for **United Overseas Bank Limited, Labuan Branch**
under power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signed, sealed and delivered for **Westpac
Banking Corporation** under power of
attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

SENIOR AGENT

Signed, sealed and delivered for **Westpac
Banking Corporation** under power of
attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

SECURITY TRUSTEE

Signed, sealed and delivered for **Westpac
Banking Corporation** under power of
attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

INITIAL SUBORDINATED CREDITORS

Signed, sealed and delivered for **Carlyle HSP Partners, L.P.** under power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signed, sealed and delivered for **TPG FOF VI
SPV, L.P.** by **TPG Advisors VI, Inc.**, its
general partner:

Signature of witness

Signature

Name of witness (print)

Name (print)

Title (print)

Signed, sealed and delivered for **TPG Asia V
Gibbs Limited** by:

Signature of witness

Signature

Name of witness (print)

Name (print)

Title (print)

Signed, sealed and delivered for **TPG VI Gibbs Limited** by:

Signature of witness

Signature

Name of witness (print)

Name (print)

Title (print)

SUBORDINATED AGENT

Signed, sealed and delivered for **Healthscope
Hospitals Holdings Pty Limited** under
power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)