**Sample Document**

**Master Guarantee Deed – Standard Terms**

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| **What is this sample document usually called?** | Master Guarantee Deed. |
| **What group of documents does it belong to?** | Project Financing Documents.  See *What other documents are closely related to it?* below. |
| **Who will sign it?** | First Loss Guarantor.  Proponent.  Financier. |
| **When is it used?** | Partnerships Addressing Disadvantage arrangements (**PAD Arrangement**). |
| **What does it do?** | Provides for:   * a ‘first loss’ guarantee (up to an agreed Specified Limit) to be provided by the First Loss Guarantor in favour of the Financier; and * residual guarantees from other Guarantors in favour of the Financier,   in each case, in respect of all amounts due and owing by the Proponent to the Financier under or pursuant to the Loan Agreement and the other Finance Documents. |
| **What areas does it cover?** | * The provision of the guarantees. * Specified Limits applicable to the First Loss Guarantor and each other Guarantor. * A requirement that any demand for payment against a Guarantor (other than the First Loss Guarantor) be made on a rateable basis with all other Guarantors and Pledgors (taking into account the Specified Limit or aggregate liability corresponding to that Guarantor or Pledgor). * Representations, warranties and undertakings. * Accession mechanics for Additional Guarantors. * Indemnities, assignment and amendment provisions. |
| **What drafting options does it include?** | **Optional Provisions** that may be applicable to a transaction.  Drafting instructions are included in the sample document to assist in drafting for the inclusion (or removal) of these and other optional features. |
| **What other documents are closely related to it?** | * Loan Agreement – provides for a loan from the Financier to the Proponent. * Guarantor Accession Deed Poll – enables Additional Guarantors to accede to the Master Guarantee Deed. * Pledge Deed – enables Pledgors to make a pledge to the Proponent for the purpose of supporting the Project for an aggregate agreed upon amount. * Side Deed – details, among other things, certain undertakings made by the Proponent and the Financier to the State of Victoria (acting through a named Government Department) (the **State**) and the State’s limited liability. |
| **What should we do before we use this sample document?** | This sample document contains general provisions and other information only and does not take into account the objectives, needs or financial arrangements of any particular transaction.  Before using this sample document, you should:   * carefully consider and make your own assessment of whether it is appropriate for the PAD Arrangement or other transaction that you are considering; * perform your own independent investigation and analysis of the suitability and appropriateness of this sample document for any PAD Arrangement or other transaction that you are considering; * consult your own legal, tax, financial and other professional advisers as part of your assessment of this sample document and its suitability for your transaction; and * satisfy yourself that cross references in the sample document to other provisions of the sample document, or to any provisions or the names of other documents, are correct. |
| **Why is this sample document available?** | This sample document is intended to provide a guide for, and to streamline the development of, the documentation (and specific provisions) that is used for a PAD Arrangement.  Parties are advised that the State will be responsible for the initial preparation and any re-drafting of the Implementation Agreement in connection with any PAD Arrangement, and this sample document is intended to be used as the basis for preparing that document. The State would expect to take into account in any evaluation of a proposed PAD Arrangement any requests for material departures from the sample document and the reasons for the departures and the possible implications for time, cost and efficiency.  The acceptance of the final form of this document by the State will be a key condition for any agreement of the terms of a PAD Arrangement. However, it may not be suitable in all circumstances and the State reserves the right to require a departure from this sample document in order to address the specifics of a particular PAD Arrangement, to address then current market practice and conditions and otherwise as necessary to protect the interests of the relevant department, agency or other State body and the State. |
| **Where can I get further information?** | If you have any questions in relation to this sample document, or any specific provision or other related information, queries can be directed to pads@dtf.vic.gov.au. |

**Legal matters**

This sample document has been prepared by Norton Rose Fulbright Australia at the request of, and in consultation with, the Victorian Department of Treasury and Finance (**DTF**) and its advisers. It forms part of a suite of sample transaction documents that has been developed by DTF for use in connection with PAD arrangements. No reliance may be placed for any purposes whatsoever on the provisions and other information contained in this sample document (or any other communications or materials separately provided or discussed verbally in connection with this sample document) or on its completeness, accuracy or fairness. No representation or warranty, expressed or implied, is given by, or on behalf of, the State, Norton Rose Fulbright Australia or any other person as to the provisions and other information included in this sample document being acceptable to the State in all circumstances, that it is suitable for any particular PAD arrangement or as to the accuracy or completeness of the provisions or other information contained in this sample document and no liability whatsoever is accepted by the State or Norton Rose Fulbright Australia for any loss howsoever arising, directly or indirectly, from any use of such provisions or other information or otherwise arising in connection with it. The provisions and other information in this sample document are subject to negotiation, verification, completion and change

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| Dated  **Master Guarantee Deed**  Parties  [First Loss Guarantor name][ACN/ABN]  [Borrower name][ACN/ABN]    [Financier name][ACN/ABN] |
|  |

**Deed** made [insert date]

**Parties** [First Loss Guarantor name] [ACN/ABN] of [address]  
(**First Loss Guarantor**)

[Borrower name] [ACN/ABN] of [address]

(**Borrower**)

[Financier name] [ACN/ABN] of [address]  
(**Financier**)

**It is agreed**

# Definitions and interpretation

## **Definitions**

In this deed:

### **Additional Guarantor** means a person which becomes an Additional Guarantor in accordance with clause 15 (*Additional Guarantor*);

### **Authorisation** means:

#### an authorisation, consent, approval, resolution, licence, exemption, filing, lodgement or registration required by any Governmental Agency or any law; or

#### in relation to anything which will be fully or partly prohibited or restricted by law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action;

### **Authorised Officer** means, in respect of a Guarantor:

#### a director or secretary of that Guarantor, or a person notified by that Guarantor to be an “Authorised Officer” of that Guarantor; and

#### any person whose title or acting title includes the word “Manager”, “Head”, “Executive”, “Chief”, “Director”, “Counsel” or “President” or cognate expressions;

### **Business Day** means a day that is not a Saturday, Sunday or public or bank holiday in Melbourne, Australia;

### **Collateral Security** means any document that grants a Security Interest to the Financier, any guarantee in favour of the Financier or other document or agreement at any time created or entered into in connection with or as security for any Guaranteed Money;

### **Corporations Act** means the *Corporations Act 2001* (Cth);

### **Facility** means the “Facility” as defined in the Loan Agreement;

### **Finance Documents** means:

#### the Loan Agreement;

#### this document and each Collateral Security;

#### each document entered into between the Financier and a Guarantor which relates to the Guaranteed Moneys;

#### any document relating to the priority of any Security Interest under a Collateral Security;

#### any other document designated as a Finance Document for the purposes of this document by the Financier, each Guarantor and the Borrower (or any of them);

#### any document amending any of the above; and

#### each document issued under any of the above;

### **Governmental Agency** means any government or governmental, semi-governmental or judicial entity or authority in any state, country or other jurisdiction, including any self-regulatory organisation established under a statute or stock exchange;

### **Guaranteed Moneys** means all amounts from time to time due and owing by the Borrower to the Financier under or pursuant to the Finance Documents;

### **Guarantor** means:

#### the First Loss Guarantor; or

#### an Additional Guarantor;

### **Guarantor Accession Deed Poll** means a document substantially in the form set out in Schedule 2;

### **Implementation Agreement** means the implementation agreement standard terms dated on or about [insert date] between the Borrower and the State of Victoria acting through [insert Department];

### **Loan Agreement** means the loan agreement dated on or about the date of this deed between the Borrower and the Financier (as may be varied, extended, replaced or novated, whether or not with the consent of each Guarantor);

### **Pledge Deed** means each deed setting out the terms pursuant to which a pledge is made available to the Borrower for the purpose of supporting the Project, including as at the date of this document:

#### the pledge deed dated on or about the date of this document between [insert pledgor(s)] and the Borrower; and

#### the pledge deed dated on or about the date of this document between [insert pledgor(s)] and the Borrower;

#### [***Note*** – *include a description of all pledge deeds that are to be entered into on or about the same date as this document.*]

### **Pledgor** a party that has entered into a Pledge Deed as a ‘pledgor’, including as at the date of this document:

#### [insert pledgor(s)]; and

#### [insert pledgor(s)];

### **PPSA** means the *Personal Property Securities Act 2009* (Cth);

### **Project** means [insert description and purpose of the project];

### **Security** means any security, guarantee or other obligation under any document;

### **Security** **Interest** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement, notice or arrangement having a similar effect, including any "security interest" as defined in the PPSA; and

### **Specified Limit** means:

#### in respect of the First Loss Guarantor, [insert specified limit]; and

#### in respect of a Guarantor (other than the First Loss Guarantor), the amount specified in the Guarantor Accession Deed Poll corresponding to that Guarantor.

## **Parties etc.**

## In this document, unless the context indicates otherwise, reference to:

### one gender includes the others;

### the singular includes the plural and the plural includes the singular;

### a party to this document or another agreement or document includes the party's successors and permitted substitutes or assigns;

### a document or agreement includes a reference to the document or agreement as amended, varied or replaced from time to time; and

### any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

# Benefit and parties

## **Guarantors bound**

Each Guarantor is taken to have notice of, and is bound by, this document and the other Finance Documents (including any amendment to any of them agreed by that Guarantor), and this document must be read together with each of them.

## **Rights independent**

Subject to the Finance Documents, the Financier may enforce its rights under this document and the other Finance Documents independently from any other person.

# Guarantee

## **Guarantee**

Subject to clause 4, each Guarantor unconditionally and irrevocably:

### guarantees the payment by the Borrower to the Financier of the Guaranteed Moneys upon demand by the Financier and the punctual performance by the Borrower of all the Borrower’s other obligations under the Finance Documents; and

### undertakes with the Financier that whenever the Borrower does not pay any amount of Guaranteed Money when due (or any amount of Guaranteed Money which would have been due if the Finance Document or the amount was enforceable, valid and not illegal), the Guarantor must immediately on demand pay that amount as if it was the principal debtor.

### Each of clauses 3.1(1) and 3.1(2) is a separate obligation. Neither is limited by reference to the other.

## **Guarantee fee**

The Borrower shall pay to each Guarantor a fee computed at the rate of A$[insert rate] per A$[insert amount] (or part thereof) of the Specified Limit corresponding to that Guarantor.

# Limit of Guarantee

## Notwithstanding any other provision of this document, the maximum amount that the Financier may recover from a Guarantor under this document is an amount equal to the Specified Limit in respect of that Guarantor.

## Clause 4.1 does not limit:

### the liability of a Guarantor in respect of any loss, cost or expense suffered by the Financier arising from that Guarantor’s fraud, wilful default or gross negligence, including a wilful failure to comply with any of its obligations under this Guarantee; or

### the amount that the Financier can claim from a Guarantor, but rather limits the amount that the Financier can ultimately recover from that Guarantor. For example, if the Guarantor is bankrupt or in liquidation, the Financier may claim a higher amount so as to maximise the distribution it receives from the trustee in bankruptcy or liquidation of the Guarantor.

# First loss guarantee

### Each party acknowledges and agrees that the guarantee provided by the First Loss Guarantor under this document is a first loss guarantee.

### Notwithstanding any other provision of any Finance Document, the Financier (or any person acting on behalf of the Financier) may only seek to recover an amount of Guaranteed Money from a Guarantor other than the First Loss Guarantor if:

#### the Financier has first made one or more demands for payment of that Guaranteed Money against the First Loss Guarantor under this Guarantee; and

#### either:

##### if the amount of Guaranteed Money demanded exceeds the Specified Limit applicable to the First Loss Guarantor, the First Loss Guarantor has paid an amount in part satisfaction only of that Guaranteed Money equal to its Specified Limit; or

##### if the amount of Guaranteed Money demanded does not exceed the Specified Limit applicable to the First Loss Guarantor, the First Loss Guarantor has failed to pay any part of that Guaranteed Money in accordance with this Guarantee; and

##### the demand for payment of that Guaranteed Money against that Guarantor is made on a rateable basis with all other Guarantors or Pledgors of the Borrower’s obligations under the Finance Documents, taking into account the Specified Limit corresponding to each Guarantor and the aggregate liability corresponding to each Pledgor.

### [***Note*** *– the above first loss guarantee structure may not be appropriate for all transactions. Parties may choose not to utilise this structure depending on the particular PAD Arrangement. In particular, the drafting above contemplates that the First Loss Guarantor will always be liable for the total Specified Limit, regardless of whether the Facility is fully drawn at the time the guarantee/pledge is called upon.*]

# Payment of Guaranteed Money

## **Place, manner and time of payment**

Subject to clause 6.3, each Guarantor must make all payments to the Financier under this Guarantee:

### on demand by the Financier, at a place and in a manner, reasonably required by the Financier;

### by 11.00 am (Melbourne time) on the due date for payment; and

### in immediately available funds and without set off, counter claims, conditions or deductions or withholdings unless required by law.

### The Borrower will use its best endeavours to provide at least [insert days] days’ prior notice to each Guarantor if it forms the view that a demand under paragraph (1) above is likely to be required.

## **Payments in gross**

The Financier, in applying towards satisfaction of the Guaranteed Money any money received by it, will credit the relevant Guarantor only with that part of the money that is actually received by the Financier in immediately available funds.

## **Payment direction**

The Financier irrevocably directs the First Loss Guarantor to pay any amount that it would be required to pay to the Financier under this document to the Borrower into an account maintained by the Borrower with the Financier. The Financier acknowledges that any payment made by the First Loss Guarantor pursuant to this clause 6.3 satisfies the First Loss Guarantor’s obligations under the terms of this document to pay the relevant amount to the Financier.

# Indemnity

If the obligation of the Borrower to pay the Guaranteed Moneys to the Financier is or becomes void or unenforceable for any reason, each Guarantor as a separate undertaking (but subject to clauses 4 and 5 above) unconditionally and irrevocably indemnifies the Financier against any loss, damage, costs or expenses incurred by the Financier in respect of the failure by the Borrower to pay to the Financier the Guaranteed Moneys.

# Extent of guarantee and indemnity

This document is a continuing security and accordingly is irrevocable and shall remain in full force and effect until all the Guaranteed Moneys have been paid to the Financier in full.

# Enforcement of Guarantee

This document is a primary obligation of each Guarantor and is in addition to and not in substitution for any other Security which the Financier may hold or have recourse to in respect of the Guaranteed Moneys and, subject to clauses 4 and 5 above, may be enforced without first having recourse to any such Security and without taking any steps or proceedings against the Borrower whether pursuant to such Security or otherwise and notwithstanding that any other Security shall be in whole or in part unenforceable by reason of any rule of law or equity.

# Judgment binding

Any judgment, order or award in relation to the Guaranteed Moneys that is binding on the Borrower is binding on each Guarantor.

# Guarantee not affected

## The liability of a Guarantor shall not be affected by:

### the insolvency or contractual incapacity of the Borrower or any Guarantor or the entering into of any scheme of arrangement or composition with creditors by, or the appointment of a liquidator, administrator, receiver or receiver and manager to, the Borrower or the Guarantor;

### the granting of time, credit or any indulgence or concession to the Borrower or the compounding or compromise, release, abandonment, waiver, variation, relinquishment or renewal of any rights of the Financier against the Borrower or by any neglect or omission to exercise any such rights; or

### any increase in relation to the liability of the Borrower to the Financier in respect of the Guaranteed Moneys.

# Suspension of Guarantor’s rights

## Until this document is released by the Financier, no Guarantor may, without the consent of the Financier:

### prove in competition with the Financier if a liquidator, provisional liquidator, receiver or receiver and manager is appointed to the Borrower; or

### claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any Security held by the Financier in connection with the Guaranteed Moneys.

# Reinstatement

If a claim is made that a payment to the Financier by the Borrower or another person is void or voidable (including, but not limited to, a claim under laws relating to liquidation, insolvency or protection of creditors), then the Financier is entitled immediately as against each Guarantor to the rights to which it would have been entitled under this document if the payment had not occurred. This clause 13 continues to apply even if the Financier has released this document.

# Representations, warranties and undertakings

## **Representations and warranties**

[***Note*** *– the following list of representations and warranties is illustrative only and is not exhaustive. The State and/or the Financier may require that additional or alternative representations and warranties be included under this section. The nature of representations and warranties to be included may vary with the transaction structure for a particular PAD Arrangement.*]

Each Guarantor represents and warrants that:

### if a corporation, it is duly incorporated and validly existing under the law of its jurisdiction of incorporation;

### the obligations expressed to be assumed by it in each Finance Document are, subject to any necessary stamping and Authorisations, equitable principles and laws generally affecting creditors' rights, legal, valid, binding and enforceable obligations;

### each Authorisation necessary to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party and to make the Finance Documents to which it is a party, its legal, valid binding and enforceable obligations, admissible in evidence in its jurisdiction of incorporation or domicile has been obtained or effected and is in full force and effect, other than the registration of any security interest created under this document on the register held under the PPSA;

### the entry into and performance by the Guarantor of, and the transactions contemplated by, this document do not and will not conflict with:

#### any law applicable to the Guarantor; or

#### any agreement or instrument binding upon the Guarantor or any of its assets or constitute a default or termination event under any such agreement or instrument;

### the Guarantor has disclosed to the Financier all information known to it which could reasonably be expected to be material to its ability to perform its obligations under the Finance Documents or to the Financier’s assessment of the nature and degree of risk undertaken by it in entering into the Finance Documents;

### all documents which have been given by the Guarantor or on behalf of the Guarantor to the Financier in connection with the Finance Documents are true and complete copies and are in full force and effect;

### any factual information provided by or on its behalf in connection with the Finance Documents was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated;

### nothing has occurred or been omitted from the information provided by the Guarantor in writing in connection with the Finance Documents and no information has been given or withheld that results in the information provided by the Guarantor to the Financier being untrue or misleading in any material respect;

### no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency have been started or (to the best of its knowledge and belief) threatened against it;

### the Guarantor’s payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law;

### except as otherwise notified in writing to the Financier before it becomes a party to this Guarantee, it does not enter any Finance Document or hold any property as a trustee and is not a partner in any partnership in each case, other than as disclosed in the Finance Documents; and

### there are no Security Interests over the Guarantor’s property other than those constituted or permitted by a Collateral Security given by the Guarantor to the Financier.

## **Undertakings**

[***Note*** *– the following list of undertakings (including reporting requirements) is illustrative only and is not exhaustive. The State and/or the Financier may require that additional or alternative undertakings be included under this section. The nature of undertakings to be included may vary with the transaction structure for a particular PAD Arrangement.*]

The Borrower and the First Loss Guarantor must provide to the Financier:

### promptly, such information regarding the financial condition, business and operations of the Borrower as the Financier may reasonably request;

### promptly, such information as the Financier may reasonably require about the Implementation Agreement and compliance of the Borrower with the terms of the Implementation Agreement;

### promptly upon becoming aware of them, details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower and the First Loss Guarantor, and which might, if adversely determined, have a material adverse effect on their ability to comply with the Finance Documents; and

### promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is made against the Borrower and the First Loss Guarantor which is reasonably likely to have a material adverse effect on their ability to comply with the Finance Documents.

# Additional Guarantors

## The Borrower may, by notice to the Financier and each Guarantor, request that any entity become an Additional Guarantor for the purpose of this Guarantee. That entity shall become an Additional Guarantor if:

### that entity executes and delivers a duly completed Guarantor Accession Deed Poll; and

### the Financier has received all documents and other evidence listed in Schedule 1 in relation that Additional Guarantor in form and substance satisfactory to the Financier.

## The Financier shall notify the Additional Guarantor promptly upon being satisfied that it has received all documents and other evidence referred to in clause 15.1(2). The Borrower must notify each Guarantor upon receipt of such notice from the Financier.

# Assignment and amendment

## **No assignment by Guarantor**

### None of the Guarantors may assign or otherwise deal with this document or any interest created by this document without the prior written consent of the Financier.

### Notwithstanding clause 16.1(1), the consent of the Financier is not required where, if the Additional Guarantor is a trustee of a trust, such assignment or other dealing is to a replacement trustee of that trust.

## **Assignment of the Financier’s rights**

Subject to any provision to the contrary in any other written agreement between the Financier and each of the Guarantors, the Financier at any time may assign or otherwise deal with this document or any interest created by this document as the Financier determines.

## **Amendments**

The Financier may not amend, supplement or change any provision in this document without the prior written consent of the Guarantors (such consent not to be unreasonably withheld).

# Waiver of subrogation rights

### Each Guarantor expressly waives all rights to be subrogated to the rights of the Financier or any other creditor of the Borrower which are inconsistent with the rights or obligations of the Financier in respect of the accounting for proceeds from the realisation of any property subject to a Security.

### No Guarantor may exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents including to:

#### take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Financier under the Finance Documents or of any other Security taken pursuant to, or in connection with, the Finance Documents by the Financier; or

#### bring legal or other proceedings for an order requiring the First Loss Guarantor or the Borrower to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under this Guarantee.

# Governing law

This document is governed by the laws in force in the State of Victoria and each Guarantor submits to the non‑exclusive jurisdiction of the courts of the State of Victoria.

# Certificate

A certificate signed by any director, manager, company secretary or attorney for the time being of the Financier stating that an amount owing by a Guarantor under this document at the date or dates specified in the certificate or stating any other failure by the Borrower as at any date or date specified in the certificate shall be conclusive evidence of the facts stated in the certificate unless the contrary is proven.

# Notices

## All notices or other communications to or by a party to this Guarantee:

### must be in writing;

### will be treated as being given or made:

#### (in the case of delivery in person or by post) when delivered, received or left at the address of the recipient shown below; or

#### (in the case of a facsimile transmission) on receipt by the sender of an error free transmission report at the end of transmission,

but if delivery or receipt is on a Business Day in the place to which the communication is sent or is later than 4.00 pm (local time), it will be treated as being given or made at the commencement of business on the next Business Day in that place; and

### must be addressed to the recipient at the address or facsimile number specified below for that party or any other address or facsimile number as subsequently notified by one party to the other parties for the purposes of this Guarantee.

The address and facsimile number of each party is:

**Financier**

Address: [insert address]

Facsimile: [insert facsimile]

Attention: [insert contact]

**First Loss Guarantor**

Address: [insert address]

Facsimile: [insert facsimile]

Attention: [insert contact]

and, in respect of any Additional Guarantor, the address and facsimile number specified in the Guarantor Accession Deed Poll for that Additional Guarantor.

# Commencement

This document will come into full force and effect upon execution of the Loan Agreement and upon delivery by the First Loss Guarantor to the Financier of this Guarantee.

# Authorised Officers

Each Guarantor:

### irrevocably authorises the Financier to rely on a certificate by any person purporting to be its director or secretary as to the identity and signatures of its Authorised Officers; and

### warrants that those persons have been authorised to give notices and communications under or in connection with the Finance Documents.

**Executed** as a deed and delivered on the date shown on the first page.

[***Insert execution clauses***]

1. Additional Guarantor Conditions Precedent

[***Note*** *– the following list of Conditions Precedent is illustrative only and is not exhaustive. The State and/or the Financier may require that additional or alternative conditions be included under this section. The nature of conditions to be included may vary with the transaction structure for a particular PAD Arrangement.*

*Regard should be had to the timings by which each condition can be reasonably expected to be satisfied.*]

1. Additional Guarantor
   * 1. A Guarantor Accession Deed Poll, duly executed by the Additional Guarantor as a deed poll (together with a certified copy of the power of attorney (if any) under which an attorney or attorneys for the Additional Guarantor executed the Guarantor Accession Deed Poll).
     2. A certified copy of a specimen of the signature of each Authorised Officer to sign and/or despatch all documents and notices to be signed and/or despatched by under or in connection with this Guarantee, the Guarantor Accession Deed Poll and the Finance Documents to which it is a party.
2. Legal opinions
   * 1. A legal opinion of the external and reputable legal advisers to the Additional Guarantor in the jurisdiction in which the Additional Guarantor is incorporated containing, among other things, (but subject to usual assumptions and qualifications) an opinion that the Guarantor Accession Deed Poll and each Finance Document to which it is a party is executed in a manner which is valid, binding and enforceable against it.
     2. Copies of any document referred to in a legal opinion referred to in subparagraph 2(1) as a document which the legal advisers reviewed in order to give their opinion (other than this Guarantee, the Guarantor Accession Deed Poll, any Finance Document and the other documents provided under another paragraph of this schedule).
3. Other documents and evidence

### If the Additional Guarantor is incorporated in Australia:

#### a certificate in relation to the Additional Guarantor signed by a director of the Additional Guarantor stating that, at the time of execution of the Guarantor Accession Deed Poll, the Additional Guarantor is solvent and will not become insolvent because the Guarantor Accession Deed Poll is executed and performed by the Additional Guarantor;

#### evidence that each document to which it is a party is executed by either:

##### 2 directors, a director and a secretary or under common seal witnessed by the same, of that Additional Guarantor, or as otherwise permitted by the Corporations Act; or

##### an attorney or attorneys for that Additional Guarantor appointed under a power of attorney executed by 2 directors, a director and a secretary or under common seal witnessed by the same, of that Additional Guarantor, or as otherwise permitted by the Corporations Act.

### If the Additional Guarantor enters into a Guarantor Accession Deed Poll and the Finance Documents to which it is a party as a trustee of a trust, a certified copy of the instrument creating that trust.

### A certified copy of the constituent documents of that Additional Guarantor.

### Evidence to the satisfaction of the Financier that the Additional Guarantor:

#### is credible;

#### is a public ancillary fund or a private ancillary fund; and

#### maintains audited financial statements reflecting that the Additional Guarantor has the ability to adhere to the obligations set out in this Guarantee.

### Evidence to the satisfaction of the Financier that the Additional Guarantor has provided a statement from the auditor of the Additional Guarantor confirming that the Additional Guarantor is a wholesale or sophisticated investor.

1. Form of Guarantor Accession Deed Poll

**Deed Poll** dated

**By**

[insert details]

(**Additional Guarantor**)

**in favour of**

[Financier name] [ACN/ABN]  
(**Financier**)

[First Loss Guarantor name][ACN/ABN]

(**First Loss Guarantor**)

[Borrower name][ACN/ABN](**Borrower**)

This Deed Poll witnesses as follows

Operative provisions

1. Definitions and interpretation
   1. Definitions

In this deed poll, unless the context clearly indicates otherwise or unless otherwise defined in this deed poll, words and expressions used in this deed poll have the same meanings as in the Master Guarantee Deed and:

**Loan Agreement** means the loan agreement dated on or about [insert date] between the Borrower and the Financier (as may be varied, extended, replaced or novated, whether or not with the consent of each Guarantor); and

**Master Guarantee Deed** means the master guarantee deed dated on or about [insert date] between the First Loss Guarantor, the Borrower and the Financier.

* 1. Interpretation

In this deed poll unless the context clearly indicates otherwise:

* + 1. a reference to this deed poll or another document means this deed poll or that other document and any document which varies, supplements, replaces, assigns or novates this deed poll or that other document;
    2. clause headings are inserted for convenience only and do not form part of this deed poll;
    3. the introduction, schedules (if any) and annexures (if any) form part of this deed poll;
    4. a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done; and
    5. including and includes are not words of limitation.

1. Accession

With effect on and from the date on which this deed poll is executed by or on behalf of the Additional Guarantor (**Effective Date**):

* + 1. the Additional Guarantor is taken to be a party to the Master Guarantee Deed and is bound by its terms;
    2. a reference in the Master Guarantee Deed to “Guarantor” includes a reference to the Additional Guarantor; and
    3. the Specified Limit for the Additional Guarantor is $[insert].

1. Acknowledgments
   1. **General**

The Additional Guarantor confirms that it has read a copy of the Loan Agreement, the Master Guarantee Deed and the Finance Documents that it is a party to before executing this deed poll.

* 1. **Order** **of enforcement**

The Additional Guarantor acknowledges that the right of the Financier to make any claim or demand under this deed poll, and the Additional Guarantor’s liability to pay any amount under this deed poll, are subject to:

* + 1. the Additional Guarantor having received a duly completed and signed demand for payment from the Financier; and
    2. the Financier having made one or more demands for payment of the Guaranteed Money against the First Loss Guarantor under the Master Guarantee Deed; and
    3. either:
       1. if the amount of Guaranteed Money demanded exceeds the Specified Limit applicable to the First Loss Guarantor, the First Loss Guarantor has paid an amount in part satisfaction only of that Guaranteed Money equal to its Specified Limit; or
       2. if the amount of Guaranteed Money demanded does not exceed the Specified Limit applicable to the First Loss Guarantor, the First Loss Guarantor has failed to pay any part of that Guaranteed Money in accordance with the Master Guarantee Deed; and
       3. the demand for payment of that Guaranteed Money against the Additional Guarantor is made on a rateable basis with all other guarantors or pledgors of the Borrower’s obligations under the Finance Documents, taking into account the aggregate liability limit corresponding to each such pledgor or guarantor.

1. General provisions
   1. The address and facsimile number of the Additional Guarantor for the purposes of clause 20 of the Master Guarantee Deed are:

Address: [insert]

Facsimile: [insert]

Attention: [insert]

* 1. The laws applicable in the State of Victoria govern this deed poll.
  2. If any clause or part of any clause in this deed poll is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed poll without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

**Executed** as a deed poll and delivered on the date shown on the first page.

[***Insert execution clauses***]