**Sample Document**

**Guarantor Accession Deed Poll – Standard Terms**

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| **What is this sample document usually called?** | Guarantor Accession Deed Poll. |
| **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?** | Additional Guarantor. |
| **When is it used?** | Partnerships Addressing Disadvantage arrangements (**PAD Arrangement**). |
| **What does it do?** | Enables Additional Guarantors to accede to the Master Guarantee Deed. |
| **What areas does it cover?** | * Mechanics of Additional Guarantor accession. * General acknowledgement provisions. * Order of enforcement. |
| **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. * Master Guarantee Deed – provides for a guarantee of the payment of all amounts due and owing by the Proponent to the Financier by the First Loss Guarantor and all Additional Guarantors. * 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.

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 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

#### any 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***]