State Security

[Project]

[##] on behalf of the Crown in right of the State of Victoria

(**State**)

Each Grantor listed in Schedule 1

(**Grantor**)

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State Security dated

**Parties** [##] on behalf of the Crown in right of the State of Victoria (**State**)

Each Grantor listed in Schedule 1 (each a **Grantor** and together the **Grantors**)

 Background

1. The background to the Project is set out in the Project Deed.
2. This Deed sets out the terms on which each Grantor grants a first ranking security interest to the State over its entire assets and undertakings as security for the performance of its obligations under each State Project Document.

Operative provisions

# Defined terms and interpretation

## Project Deed definitions

Unless otherwise expressly defined, expressions used in this Deed have the meaning given to them in or for the purpose of the Project Deed.

## Definitions

In this Deed, unless the context otherwise requires:

1. **Capital** means, with respect to a Grantor, the uncalled and called but unpaid nominal or premium capital of that Grantor.

**Collateral** means, with respect to a Grantor, all present and after acquired property, interests, rights and proceeds in respect of which that Grantor has at any time sufficient rights to grant a security interest or a charge, including all of the following:

* 1. the assets, undertaking and goodwill of the business of that Grantor; and
	2. the Capital.
1. **Deal** means sell, convey, assign, transfer, lease, licence or otherwise dispose or part with possession of, make any bailment over, grant any option over or create or permit to exist any other interest in any part of the Collateral, and in the case of Grantor Debts (or the proceeds of realisation of the Grantor Debts), includes effecting or permitting any combination of accounts or set-off.
2. **Deed** means this deed and includes all schedules, attachments and annexures to it.
3. **Dispute** has the meaning given in clause 17.1.
4. **Enforcement Event** means the occurrence of any of the following events:
	1. the State has elected, by notice under clause 45 of the Project Deed, to terminate the Project Deed in connection with a Major Default or a Default Termination Event; or
	2. the State has elected to exercise a Step-In Right in accordance with the Project Deed and Project Co has failed to comply with any of its obligations under clause 38 of the Project Deed.
5. **Grantor Debts** means, with respect to a Grantor, all debts whether actual or contingent at any time owing to that Grantor together with all books or documents of account or records evidencing or recording such debts, including:
	1. any accounts that arise from that Grantor granting a right, or providing services, in the ordinary course of its business whether or not that Grantor is the person to whom the right is granted or the services are provided;
	2. any accounts that are proceeds of inventory; and
	3. any other accounts (as defined in the PPSA).
6. **Guarantee** means a guarantee, indemnity, letter of credit, legally binding letter of comfort or other obligation of any kind:
	1. to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;
	2. to indemnify any person against the consequences of default in the payment of; or
	3. to be responsible for,
7. an obligation or monetary liability of another person or the assumption of any responsibility or obligation in respect of the solvency or financial condition of another person.
8. **Insolvency Provisions** means any Law relating to insolvency, sequestration, liquidation or bankruptcy (including any Law relating to the avoidance of conveyances in fraud of creditors or beneficiaries of trusts or any Law of preferences, and any Law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.
9. **Marketable Securities** has the meaning given to it in section 9 of the Corporations Act.
10. **Obligations** means all the liabilities and obligations of each Grantor to the State in connection with any State Project Document to which it is a party, and includes any liabilities or obligations that:
	1. are liquidated or unliquidated;
	2. are present, future, prospective or contingent;
	3. are in existence before or come into existence upon or after the date of this Deed;
	4. relate to the payment of money or the performance or omission of any act;
	5. are to pay damages or that sound in damages only;
	6. accrue as a result of any Major Default or Default Termination Event; or
	7. would exist but for an Insolvency Event,

and irrespective of:

* 1. whether a Grantor is liable or obligated solely, jointly or jointly and severally with another person;
	2. the circumstances in which the State comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this Deed, including any assignment of any liability or obligation or of this Deed; or
	3. the capacity in which the State or a Grantor comes to owe or be owed such liability or obligation.
1. **Other Party** has the meaning given in clause 20.10(a).
2. **Permitted Security Interest** means:
	1. a lien arising solely by operation of Law and in the ordinary course of the Grantor's ordinary business, provided the lien does not secure overdue debts;
	2. a Security Interest to which the State has given its prior consent, but only to the extent it secures financial indebtedness in amounts to which the State has given consent; and
	3. each Financier's Security (as defined in the Finance Direct Deed).
3. **Power of Attorney** means each power of attorney created under clause 9.3.
4. **PPSA** means the *Personal Property Securities Act 2009* (Cth).
5. **Project Deed** means the document entitled "[##] — Project Deed" between the State and Project Co dated on or about the date of this deed.
6. **Receiver** means a receiver or receiver and manager appointed with respect to a Grantor by the State under this Deed or under Law in connection with this Deed, and, if more than one, then each of them, and also any employee, contractor, servant, agent or delegate of any of them.
7. **Relevant Personal Property** has the meaning given to that term in clause 20.12.
8. **Revolving Asset** means any part of the Collateral:
	1. which is:
		1. inventory;
		2. a negotiable instrument;
		3. machinery, plant or equipment which is not inventory and has a value of less than $1,000 or its equivalent;
		4. money (including money withdrawn or transferred to a third party from an account of any Grantor with a bank or other financial institution); and
	2. in respect of which a Grantor has a current licence to Deal under clause 4.2.
9. **Secured Money** means, at any time, all money the payment or repayment of which then forms part of the Obligations.
10. **Serial Numbered Property** means Collateral that may or must be described by serial number in a financing statement under the PPSA.
11. **Step-In Right** means any right of the State to step in under clause 38 of the Project Deed.

## Interpretation

In this Deed:

### (**headings**): headings and subheadings are for convenience only and do not affect interpretation;

### (**number and gender**): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

### (**Deed and Schedule references**): a reference to:

#### a party, clause, Schedule, Annexure or Attachment is a reference to a party, clause, Schedule, Annexure or Attachment of or to this Deed; and

#### a section or part is a reference to a section or part of the Schedule or the PSDR (as applicable) in which they are located,

unless expressly provided otherwise;

### (**Appendix**): a reference to an Appendix is a reference to an Appendix of the PSDR;

### (**document as amended**): a reference to a Project Document or to any other deed, agreement, document or instrument means a reference to such Project Document or other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;

### (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation and, in the case of a trustee, includes a substituted or additional trustee;

### (**person**): a reference to a person includes an individual, the estate of an individual, a corporation, a body corporate, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, an Entity and a trust (including a trustee);

### (**replacement person**): a reference to a person appointed under this Deed or any other Project Document includes that person's replacement or delegate appointed in accordance with this Deed or other Project Document (as applicable);

### (**Standards**): unless otherwise expressly stated, a reference to a Standard includes that Standard as amended or updated from time to time;

### (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes:

#### all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the legislation or delegated legislation; and

#### consolidations, amendments, re‑enactments and replacements;

### (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

### (**"includes"**): "include", "includes" and "including" will be read as if followed by the phrase "(without limitation)";

### (**"or"**): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;

### (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

### (**"$"**): a reference to "$", AUD or dollar is to Australian currency;

### (**Business Day**): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;

### (**time**):a reference to time is a reference to time in Melbourne, Victoria, Australia;

### (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

### (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

### (**absolute discretion**): unless the State or the State Representative is expressly required under a State Project Document to act reasonably in exercising a power, right or remedy, the State can exercise any power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

### (**"may"**): without limiting clause 1.3(t), unless the State is expressly required under a State Project Document to act reasonably in exercising a power, right or remedy, the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

### (**replacement Authorities**): where there is a reference to an Authority, institute, association or other body referred to in a State Project Document which:

#### is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, that State Project Document is deemed to refer to that other entity; or

#### ceases to exist, that State Project Document is deemed to refer to the new entity (if any) which serves substantially the same purpose or object as the former entity;

### (**no bias against drafter**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proposed that provision;

### (**more than one Grantor**): if more than one person is identified as the Grantor, that expression refers to them, and the obligations of the Grantor under this Deed bind them, jointly and severally;

### (**assets**): a reference to an asset includes any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;

### (**grant a security interest**): to 'grant a security interest' includes to charge, mortgage, pledge, encumber, assign by way of security and transfer by way of security; and

### (**PPSA**): unless the context requires otherwise, each of the terms "personal property", "purchase money security interest", "secured party", "financing statement", "financing change statement", "chattel paper" and "verification statement" have the meanings given to them in the PPSA.

## Prior approval or consent

If a Grantor is required by a State Project Document to obtain the State's or the State Representative's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained as a condition precedent to the action, document or thing occurring or coming into effect.

## Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by a Grantor, all things must be done by that Grantor without undue delay.

## Provisions limiting or excluding Liability, rights or obligations

### (**No limitation**): A right or obligation of a party under this Deed will not limit or exclude any other right or obligation of a party under this Deed unless otherwise expressly stated.

### (**Limitation permitted by Law**): Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

## Relationship of the parties

Nothing in any Project Document:

### (**no additional relationship**): creates a partnership, joint venture, fiduciary, employment or agency relationship with the State; or

### (**no good faith**): imposes any duty of good faith on the State,

unless otherwise expressly stated.

## State's rights, duties and functions

### (**State's own interests**): Unless otherwise expressly stated in the State Project Documents, nothing in the State Project Documents gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations under the State Project Documents.

### (**State's rights**): Notwithstanding anything expressly stated or implied in the State Project Documents to the contrary:

#### the State is not obliged to exercise any executive or statutory right duty or function, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of any of its executive or statutory rights, duties or functions; and

#### nothing expressly stated or implied in the State Project Documents has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its executive or statutory rights, duties or functions.

### (**No Claim**): Subject to clause 1.8(d), no Grantor will be entitled to make any Claim against the State in connection with any exercise or failure of the State to exercise any of its legal, executive or statutory rights, duties or functions.

### (**Liability for breach**): Clauses 1.8(a) and 1.8(b) do not exclude or limit any Claim that Project Co may have against the State or a State Associate, or any Liability the State or any State Associate may have to Project Co or any Project Co Associate, under the State Project Documents or at Law:

#### for damages for breach of a State Project Document by the State or any State Associate; or

#### in respect of Project Co's or any Project Co Associate's Liability to a third party in respect of death, personal injury or damage to property, to the extent that the Liability of Project Co or any Project Co Associate is a consequence of a fraudulent, reckless, unlawful or malicious act or omission of the State or any State Associate.

## Reasonable endeavours of State

A statement in a State Project Document providing that the State or any of its officers, employees or agents will or must use or exercise "best endeavours", "reasonable endeavours", "act reasonably" or "act in good faith" in relation to an outcome, means that the State must take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities but does not mean that the State or any of its officers, employees or agents:

### (**no guarantee**): guarantees the relevant outcome will be brought about; or

### (**no obligation**): are required to:

#### exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;

#### exercise a power or discretion or otherwise act in a manner that the State regards as not in the public interest;

#### develop or implement new policy or a change in policy; or

#### procure any new Legislation or a change in Legislation.

## Final and binding

1. If a determination, decision, opinion or direction is stated in this Deed to be "final and binding", neither party is entitled to challenge that determination, decision, opinion or direction on any basis other than that it is an indisputable error in complete disregard of the facts of the case, the applicable law or credible evidence.

## Proportionate liability

1. The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights of either party under this Deed, whether such rights are sought to be enforced in contract, tort or otherwise.

# Conditions precedent

The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 of the Project Deed, is a condition precedent to the coming into operation of this Deed (other than this clause 2 and clauses 1.1, 1.2, 1.3, 1.7 to 1.9, 5 and 16 to 20).

# Security Interest

## Creation

### (**Security interest**): Each Grantor grants a security interest in the Collateral to the State to secure the due and punctual performance, observance and satisfaction of the Obligations and the punctual payment in full to the State of all the Secured Money.

### (**Nature**): This security interest is:

#### a transfer by way of security of Collateral consisting of:

##### any contract, arrangement or understanding evidencing or giving rise to accounts or chattel paper which are not, or cease to be, Revolving Assets; or

##### a Project Document; and

#### a charge of the Collateral not so transferred.

## Priority

Subject to the Finance Direct Deed, this security interest is a first ranking security and takes priority over all other Security Interests given by each Grantor.

## State assumes no obligations

The State will not be deemed by virtue of this Deed to have assumed any obligation of any Grantor under any Law.

# Dealing with Collateral

## Dealing restrictions

### No Grantor will without the State's prior consent or as expressly permitted in any other State Project Document:

### (**no security interests**): create, purport or attempt to create or permit to exist any Security Interest over the Collateral other than a Permitted Security Interest;

### (**no dealing**): subject to clause 4.2, Deal with any part of the Collateral;

### (**Grantor Debts and accounts**): except in accordance with or as permitted by the Finance Documents, permit any set off or combination of accounts in respect of any Grantor Debts; or

### (**not to prejudice**): do, fail to do or consent to any act, omission or thing as a result of which the Collateral becomes or could become liable to surrender, forfeiture or cancellation, or becomes or could become prejudiced in any manner, or the value to the State of any Security Interest under this Deed becomes or could become materially lessened.

## Licence to Deal

### Subject to clause 4.3, each Grantor may Deal with (but not grant any Security Interest other than a Permitted Security Interest over) any Revolving Asset in the ordinary course of its ordinary business.

## Termination of licence to Deal

### (**End of licence**): A Grantor's licence to Deal with any Revolving Assets under clause 4.2 will come to an end if:

#### that Grantor breaches clause 4.1 or takes any steps which would result in a breach of that clause;

#### an Authority takes a step (including signing a notice or direction) which may result in Taxes ranking ahead of the security interest under this Deed;

#### an Insolvency Event occurs in relation to that Grantor; or

#### an Enforcement Event occurs.

### (**Reinstatement of licence**): A Grantor's licence to Deal may be reinstated by the State giving that Grantor a notice stating that, from a date specified in the notice, the Collateral specified in the notice is again subject to the licence to Deal.

## Notice to debtor or contractual counterparty

Each Grantor authorises the State to give notice to any debtor or contractual counterparty under any:

### account or chattel paper which is not, or ceases to be, a Revolving Asset; or

### Project Document transferred under clause 3.1(b)(i).

## Control of inventory

Any inventory which is not, or ceases to be, a Revolving Asset is specifically appropriated to the security interest under this Deed. No Grantor may remove it without obtaining the specific and express authority of the State to do so.

## Finance Direct Deed

Despite any other provision in this Deed, the State's rights in accordance with this Deed, including the exercise of any power by the State, a Receiver or an attorney, are subject to the Finance Direct Deed.

# Representations and warranties by the Grantors

## Representations and warranties

Each Grantor represents and warrants for the benefit of the State that:

### (**good title**): it has good right and title to the Collateral;

### (**no Security Interests**): the Collateral is free of all Security Interests other than in favour of the State or Permitted Security Interests;

### (**information for financing statement**): the State has received from the Grantor all information reasonably requested by the State to complete the financing statement (or financing change statement if necessary) for each Security Interest under this Deed and that information is true and correct in all respects; and

### (**No Serial Numbered Property**): it does not own Collateral which is Serial Numbered Property other than any such property notified to the State under clause 6.3(a)(vi).

## Repetition of representations and warranties

The representations and warranties of each Grantor under clause 5.1 are made and given on the date of this Deed and each of them is taken to be repeated on the first Business Day of each Quarter commencing after the date of this Deed whilst any Secured Money remains outstanding or any Obligation remains unfulfilled (whether or not then due for payment or fulfilment, respectively), with reference to the facts and circumstances then subsisting at those dates.

# General undertakings

## Performance of Obligations by the Grantors

Each Grantor must punctually perform, observe and fulfil the Obligations and pay the Secured Money relating to it in the manner provided in any State Project Document.

## Grantor details

Each Grantor will notify the State before:

### it changes its name or any trust in respect of which it is a trustee (if applicable) changes its name;

### any ABN, ARBN or ARSN allocated to it changes, is cancelled or ceases to apply to it;

### any ABN, ARBN or ARSN is allocated to it where it did not previously have one; or

### it becomes the trustee of any trust not specified in this Deed.

## Collateral generally

### (**Obligations of Grantors**): Each Grantor will:

#### except to the extent otherwise agreed in the Finance Direct Deed, lodge with the State all certificates, scrip and other indicia of that Grantor's title or interest in any Marketable Securities, all negotiable instruments other than cheques, all chattel paper forming part of the Collateral and all other documents of title to the whole or part of the Collateral, immediately on receipt of the same;

#### take all steps reasonably necessary to ensure that all Security Interests which it holds are attached, enforceable and continuously perfected under the PPSA until the obligations they secure are satisfied or they are released for value;

#### at the request of the State, effect all registrations and take or defend all legal proceedings that the State, acting reasonably, considers necessary or desirable for the preservation, protection or recovery of the Collateral;

#### as and when reasonably requested by the State, provide the State with written details of any property in which it has rights that is, or is capable of being, subject to a purchase money security interest in favour of any third party and the amount secured;

#### not permit the Collateral, or any part of the Collateral to become:

##### commingled with any asset that is not subject to the Security Interest under this Deed, except in the ordinary course of that Grantor's business;

##### an accession to or affixed to any asset that is not subject to the security interest under this Deed; and

#### immediately notify the State if it becomes aware of the acquisition of any Serial Numbered Property with a value in excess of [$10,000] which forms part of the Collateral and, in respect of that Serial Numbered Property, all the details required by the PPSA to be entered in a financing statement.

### (**Nominee**): Each Grantor irrevocably and unconditionally appoints, for the purposes of section 153 of the PPSA, the State as its nominee and authorises the State to act on its behalf in connection with any Security Interest granted in favour of that Grantor that:

#### is evidenced or created by any chattel paper or Project Document which has been, or will be, transferred in favour of the State under this Deed; and

#### has been perfected by registration under the PPSA.

## General undertakings

### (**Maintain status**): Each Grantor will maintain its status as a company limited by shares under the Corporations Act.

### (**No administrator**): Each Grantor will not appoint an administrator without first giving notice to the State.

### (**Stamping**) Each Grantor will ensure that this Deed is stamped for the proper amount in each state and territory of Australia in which this Deed is required to be stamped.

### (**Security interest not prohibited**): Each Grantor will:

#### ensure that no Finance Document, Key Subcontract, Significant Subcontract or other contract (which is not an immaterial contract) entered into by a Grantor (whether before, on or after the date of this Deed), prohibits the Grantor from charging, mortgaging or granting a security interest with respect to its rights under or in respect of that contract by means of this Deed;

#### use its reasonable endeavours to ensure that no immaterial contract entered into by a Grantor (whether before, on or after the date of this Deed) prohibits the Grantor from charging, mortgaging or granting a security interest with respect to its rights under or in respect of that contract by means of this Deed; and

#### if any Law governing this Deed requires that some action be taken or some consent be obtained before a valid security interest can be granted by a Grantor and is perfected over any part of the Collateral, ensure that it promptly does anything necessary to ensure that the relevant action is taken or consent is obtained and remains in force.

# Rights to demand payment and exercise powers

If an Enforcement Event occurs then, during any period it subsists, at the option of the State and notwithstanding any delay or previous waiver of the right to exercise that option:

### (**demand**): the Secured Money becomes immediately due and payable on demand from the State;

### (**powers**): all rights not previously exercisable become exercisable; and

### (**rights**): any right of a Grantor to Deal with the Collateral (other than through a Receiver appointed under this Deed) immediately ceases.

# Receivers: Appointment and rights

## Appointment

### While an Enforcement Event subsists, the State may appoint any person or persons to be the Receiver of the whole or part of the Collateral.

## Removal

### (**Right to remove**): The State may at any time withdraw the appointment of the Receiver appointed under clause 8.1 as to the whole or part of the Collateral. In case of the removal, retirement or death of any Receiver, the State, subject to clause 8.2(b), may appoint another person or persons in the Receiver's place.

### (**Obligation to remove**): Unless the State is otherwise entitled to appoint a Receiver under clause 8.1, the State must withdraw the appointment of the Receiver appointed as a result of an Enforcement Event as soon as practicable after the State ceases to exercise its Step-In Rights.

## More than one Receiver

If more than one person is appointed as the Receiver, the State may at its option specify whether the appointment and the rights of each appointee will be joint, or joint and several. If no specification is made, the appointment and the rights of each appointee will be joint and several.

## Remuneration of Receiver

The State may fix the rate of remuneration of any Receiver, which rate will not exceed the standard hourly rate from time to time charged by the firm of which the Receiver is a member for work of the level conducted by the Receiver.

## Agent of Grantors

### Subject to clause 8.5(b), every Receiver will be the agent of the relevant Grantor and, subject to all applicable Laws, each Grantor will be solely responsible for all acts and omissions by, and the remuneration of, the Receiver.

### The power to appoint a Receiver under this clause 8 may be exercised even though:

#### at the time when an Enforcement Event is subsisting or when an appointment is made, an order may have been made or a resolution may have been passed to wind up the relevant Grantor; or

#### a Receiver appointed in the circumstances specified in clause 8.5(b)(i) may not, or may not in some respects, act as the Grantor's agent.

## Indemnity

The State may give such indemnities to any Receiver concerning the performance of the Receiver's duties as are permitted by Law. If the State is obliged to pay any money under any indemnity, that money will become part of the Secured Money.

## Rights of Receiver

In addition to powers conferred by statute and any other rights, and without the need for any consent from a Grantor or any other person, the Receiver will have all of the following rights in relation to the Collateral with respect to which the Receiver has been appointed:

### (**Section 420**): all of the powers granted to a receiver of property of a corporation under section 420 of the Corporations Act;

### (**to take possession**): to take possession or control of, or to make use of, the whole or any part of the Collateral, or to relinquish such possession or control;

### (**to convert to money**): to convert, liquidate and reduce the whole or any part of the Collateral into money;

### (**to lease**): whether or not the Receiver has taken possession, to lease or licence in the name of the relevant Grantor or otherwise the whole or any part of the Collateral for any period and on any terms, or to vary or terminate a lease or licence;

### (**to carry on business**): to carry on or concur in carrying on any business then conducted by the relevant Grantor, and to effect all Insurances required to be taken out or maintained under the Project Deed and do all acts which that Grantor might do in the ordinary conduct of such business for the protection or improvement of the whole or part of the Collateral;

### (**to employ**): to employ consultants, professional advisers, sub-contractors, agents and employees (including any person associated with a firm or company in which the Receiver is a member or in which the Receiver is interested, and that person may charge for his or her services as if he or she had been independently retained at such salaries or remuneration as the Receiver thinks fit), and to act on any advice given by that person;

### (**to conduct works**): to repair, renew, replace, renovate or clean the Collateral, to erect any new buildings or make any improvements to any land forming part of the Collateral, and to demolish, alter, rebuild or extend any existing improvements on the Collateral. All outlays and expenses paid or incurred by the Receiver in this regard will be deemed to form part of the Secured Money;

### (**to sell property**): whether or not the Receiver has taken possession, to sell or concur in selling all or any of the Collateral by public auction, private treaty or tender, for cash or on credit, in one lot or in parcels, with or without special conditions or stipulations as to title, or the time and the mode of payment of purchase money, and on such other terms as the Receiver thinks fit, with power to allow deferred payment of any part of the purchase money, whether or not secured by a Security Interest from the purchaser and with full power to buy in and to rescind or vary any contract for sale, and to resell without being responsible for loss including a right to require that the purchaser assume all or any obligations of any of the Grantors under the Project Documents, whether those obligations are present or future, actual or contingent;

### (**contracts for sale**): to exercise all or any rights of the relevant Grantor under any contract for sale, and to execute those contracts, any applications for transfer, transfers, assignments and assurances of all or any part of the Collateral in the name and on behalf of the relevant Grantor or otherwise, and to do all other acts and things for implementing and completing any sale that the Receiver deems necessary;

### (**to sever and sell fixtures**): to sever fixtures belonging to the relevant Grantor and to sell those separately from any other part of the Collateral;

### (**to invest proceeds against contingencies**): if any part of the Secured Money is contingent, to invest, deposit or hold any part of the Collateral in a form or mode of investment for the time being as the Receiver in its absolute discretion thinks fit, with like power to vary, transpose or re-invest the investments or deposits from time to time until such part of the Secured Money ceases to be contingent;

### (**to enter into contracts**): to enter into any contract or arrangement with any person for any purpose connected with this Deed or the whole or any part of the Collateral or in furtherance of any right (other than a contract for borrowing or raising of funds), on such terms and conditions as the Receiver in its absolute discretion thinks fit including granting or conferring options to, in favour of or exercisable by, any person for the purpose of or in connection with the sale, purchase, leasing, hiring or other dealing with, the whole or any part of the Collateral;

### (**to perform contracts**): to perform, observe and carry out, enforce specific performance of, exercise or refrain from exercising, obtain the benefit of, and to vary or rescind, the relevant Grantor's rights under all contracts and rights forming part of the Collateral or entered into in the exercise of any right;

### (**to take proceedings**): to institute, conduct or defend any proceedings in Law, equity or bankruptcy, and to submit to arbitration, mediation or conciliation in the name of the relevant Grantor or otherwise and on any terms, any proceeding, claim, question or dispute in connection with the Collateral or otherwise;

### (**to compromise**): to make any settlement, arrangement or compromise regarding any action or dispute arising in connection with the Collateral, and to grant to any person involved in any action or dispute or other indulgence, and to execute, such releases or discharges in connection with any action or dispute as the Receiver thinks expedient in the interests of the State;

### (**to appeal**): to appeal against or to enforce any judgment or order;

### (**to bankrupt debtors and wind-up companies**): to make debtors bankrupt and to wind-up companies and to do all things in connection with any bankruptcy or winding up which the Receiver thinks is necessary for the recovery or protection of the whole or part of the Collateral, or for the security or other benefit of the State;

### (**to delegate**): with the consent of the State, to delegate to any person for such time or times as the State approves, any of the rights, including this power of delegation;

### (**to file**): to file all certificates, registrations and other documents and to take any and all action on behalf of the relevant Grantor which the State or the Receiver believes is necessary to protect, preserve or improve any or all of the Collateral and the rights of the relevant Grantor and the State in respect of any agreement for sale, and to obtain for the State all of the benefits of this Deed and any Project Document, and, in particular, the placing of the relevant Grantor into liquidation or the appointment of a Receiver will be deemed to be an event against which the State may protect its rights;

### (**to make calls on Capital**): to call and get in Capital;

### (**to operate bank accounts**): to open or operate any bank account in the name of the relevant Grantor whether alone or jointly to the exclusion of the relevant Grantor, and to deposit or withdraw any money to the credit of that account, and to sign and endorse or to authorise others to sign and endorse in the name of the relevant Grantor cheques, promissory notes bills of exchange and other negotiable instruments;

### (**to do all other things necessary**): to do all things necessary or convenient to perform, observe and fulfil any of the covenants on the part of any of the Grantors contained in this Deed; and

### (**Receiver's discretion**): subject to duties owed by the Receiver to the relevant Grantor and its creditors at Law which may not be excluded by contract, to do all other acts and things without limitation as the Receiver thinks desirable or expedient in the interests of the State,

and any further powers and discretions as the State confers on the Receiver by notice to the Receiver for the purposes referred to in this clause 8.7.

# State's powers

## Exercise of rights

### (**State's rights**): Subject to clause 9.1(b), while an Enforcement Event subsists the State may without notice and whether or not a Receiver has been appointed:

#### exercise all or any of the rights conferred on a Receiver or which would be conferred on a Receiver if appointed, as if those rights had been expressly conferred on the State;

#### exercise all other rights; and

#### appoint an agent or joint and several agents and delegate such powers to it or them (in which case clauses 8.1, 8.4 and 8.6 will apply as if it or they were appointed as the Receiver).

### (**Withdrawal**): If the State must withdraw the appointment of the Receiver in accordance with clause 8.2(b), the State must as soon as practicable cease to exercise rights under this clause 9.1.

## Act jointly

The State or the Receiver may exercise any of the rights in conjunction with the exercise of similar powers by any other holder of a Security Interest of the whole or part of the Collateral or by any Receiver appointed by that other holder of a Security Interest, and may enter into and give effect to agreements and arrangements with that other holder of a Security Interest or receiver as the State or the Receiver thinks fit.

## Power of attorney

### (**Acts requested by State**): As from the date of this Deed, each Grantor irrevocably appoints the State, and each agent and attorney from time to time of the State, and any Receiver appointed under this Deed, severally, as attorney of the relevant Grantor, with power to:

#### do all acts which are required to be done by that Grantor under this Deed and which that Grantor has failed to do within 10 Business Days after being requested by notice to do so by the State;

#### do anything necessary or desirable in the opinion of the State, agent, attorney or Receiver to:

##### give full effect to this Deed;

##### better secure the Collateral to the State in a manner consistent with this Deed and the Finance Direct Deed; or

##### assist in the execution or exercise of any right or power under this Deed or at law in connection with this Deed,

#### including execute any transfer (including any transfer in blank) or other document; and

#### appoint (and remove at will) at any time any person as a substitute for an attorney.

### (**Acts while certain circumstances subsist**): Each Grantor irrevocably appoints the State, each agent from time to time of the State, and any Receiver appointed under this Deed, severally, as attorney of the relevant Grantor, with power while an Enforcement Event subsists to:

#### do all acts which are required to be done by that Grantor under this Deed or another Project Document or to exercise any right;

#### take further action and to execute further instruments which are, or are in the reasonable opinion of the State, necessary to perfect the Security Interest created by this Deed;

#### demand, sue for, recover and receive the Collateral or from any person, in the name of a Grantor or in the name of the State, the relevant agent, Receiver or any other attorney appointed under this clause 9.3;

#### commence, carry on, enforce, settle, arrange and compromise any proceedings to obtain or enforce the payment or delivery of Collateral;

#### exercise all and any powers, rights, discretions and remedies available under or in connection with the Collateral (including rights available under the Corporations Act or any other statute);

#### without limiting the foregoing, exercise all or any powers, rights, discretions and remedies available under or in connection with the Project Documents (including rights available upon exercise of the Step-in Rights); and

#### appoint (and remove at will) at any time any person as a substitute for an attorney.

### (**Ratification and confirmation**): Each Grantor ratifies and confirms now and for the future all actions lawfully undertaken by or on behalf of its attorney under this Power of Attorney.

### (**Duration**): Each Grantor declares that this Power of Attorney will continue until the discharge of this Deed.

## Exclusion of PPSA provisions

To the extent permitted by law, in respect of each security interest created by this Deed and to the extent the State is or becomes a secured party in relation to Relevant Personal Property:

### for the purposes of sections 115(1) and 115(7) of the PPSA:

#### the State need not comply with sections 22, 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) or 135 of the PPSA; and

#### sections 142 and 143 of the PPSA are excluded; and

### for the purposes of section 115(7) of the PPSA, the State need not comply with sections 132 and 137(3) of the PPSA.

## Exercise of rights

If the State exercises a right in connection with this Deed, that exercise will be taken to be an exercise of the right under the general law unless the right is only available under the PPSA or the State states otherwise at the time of exercise.

# Time periods

## Exclusion of time periods

Neither the State nor any Receiver need give any Grantor any notice or demand or allow time to elapse before exercising a right under this Deed or conferred by Law (including a right to sell) unless the notice, demand or lapse of time is required by Law and cannot be excluded, or is otherwise expressly required by this Deed.

## Mandatory notice period

If the Law requires that a period of notice must be given or a lapse of time must occur or be permitted before a right under this Deed or conferred by Law may be exercised, then:

### (**mandatory period**): when a period of notice or lapse of time is mandatory, that period of notice must be given or that lapse of time must occur or be permitted by the State; or

### (**fixed period**): when the Law provides that a period of notice or lapse of time may be stipulated or fixed by this Deed, then one day is stipulated and fixed as that period of notice or lapse of time including (if applicable) as the period of notice or lapse of time during which:

#### default must continue before a notice is given or requirement otherwise made for payment of the Secured Money or the observance of other obligations under this Deed; and

#### a notice or request for payment of the Secured Money or the observance of other obligations under this Deed must remain not complied with before the State or a Receiver may exercise its rights.

# Application of money

## Priority of payments

Subject to the Finance Direct Deed, all money received by the State or by the Receiver as a result of the exercise of the rights may be applied:

### (**incidental to exercise of rights**): in payment of all fees, costs, charges, expenses and disbursements incurred in or incidental to the exercise or performance or attempted exercise or performance of any of the rights;

### (**outgoings**): in payment of any other outgoings as the State or the Receiver thinks fit;

### (**payment of prior security interests**): in payment of other Security Interests of which the State is aware to the extent to which they have priority to this Deed, in the order of their priority;

### (**payment of Secured Money**): in payment of the Secured Money then owing or contingently or prospectively owing, whether or not due and payable;

### (**subsequent security interests**): in payment of subsequent Security Interests of which the State is aware to the extent to which they have priority after this Deed, in the order of their priority; and

### (**surplus**): if there is any surplus (which will belong to the relevant Grantor but will not carry interest), in payment to the relevant Grantor.

## Money received

In applying any money towards satisfaction of the Secured Money, each Grantor will be credited only with so much of the money available for that purpose as will be actually received by the State or the Receiver in relation to the relevant Collateral and not required for whatever reason to be disgorged, any credit to be dated from the time of receipt. It is acknowledged that the amount of money actually received in relation to relevant Collateral may be a function of the amount attributed to the Collateral by the State or the Receiver.

## Application of payments or credits

Each of the State and the Receiver has an absolute discretion to apply any payment or credit received by it under this Deed (and, to the extent relevant, attributed to the Secured Money) in reduction of any part or parts of the Secured Money, whenever and on whatever account the Secured Money became secured, notwithstanding any principle or presumption of Law to the contrary or any direction given at the time of receipt, and without the need to communicate its election to any person.

## Reliance on certificate

In making any payment to any other holder of a Security Interest under clause 11.1, the State and the Receiver may rely on a certificate from that holder of a Security Interest as to the amount secured, and are not bound to enquire as to the accuracy of the certificate or whether the amount referred to is validly secured by the Security Interest.

# Liability and release

## Continuing obligation

Subject to clause 12.7, this Deed constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation, or any other matter or thing. Without limiting the generality of the foregoing, each indemnity in this Deed is a separate additional, independent and continuing obligation and will survive the discharge of this Deed. Unless otherwise agreed, payment by the State will not be a pre-condition to liability under any indemnity.

## Personal liability

No grant of full or partial satisfaction of or discharge from this Deed by the State will, unless it expressly provides otherwise, release a Grantor from personal liability under this Deed or under any other State Project Document until none of the Secured Money is owing (whether actually, contingently or prospectively) and it is not reasonably foreseeable that there could be any Secured Money owing in the future.

## Settlement conditional

### (**Conditions on settlement**): Any settlement or discharge between the State and a Grantor is conditional on any security or payment given or made to the State by the relevant Grantor or any other person in relation to the Obligations relating to a Grantor not being avoided, repaid or reduced (including by virtue of any Insolvency Provision). If the security or payment is avoided, repaid or reduced, the State is entitled to recover the value or amount of such security or payment avoided, repaid or reduced from the Grantors subsequently as if that settlement or discharge had not occurred.

### (**Consequences of settlement**): If:

#### the State has at any time released or discharged:

##### a Grantor from its Obligations; or

##### any assets of a Grantor from this Deed,

in either case in reliance on a payment, receipt or other transaction to or in favour of the State; or

#### any payment, receipt or other transaction to or in favour of the State has the effect of releasing or discharging:

##### a Grantor from its Obligations; or

##### any assets of a Grantor from this Deed,

##### and:

#### that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under any other law; and

#### that claim is upheld or is conceded or compromised by the State,

then:

#### the State will immediately become entitled against the relevant Grantor to all rights as it had immediately before that release or discharge; and

#### the relevant Grantor must, to the extent permitted by law:

##### immediately do all things and execute all documents as the State, acting reasonably, may require to restore to the State all those rights; and

##### indemnify the State against all costs, damages, claims, demands and actions suffered or incurred by it in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

### (**Reinstatement**): Any discharge, termination or release of this Deed is subject to reinstatement of the State's rights under this clause 12.3.

## Limitation on Grantor's rights

Until the Secured Money has been irrevocably paid and discharged in full, each Grantor may not:

### share in any Guarantee, Security Interest or money received or receivable by the State in relation to the Secured Money or stand in the place of the State in relation to any Guarantee, Security Interest or right to receive money; or

### claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any document or agreement to which the State is a party.

## No marshalling

The State is not under any obligation to marshal or appropriate in favour of a Grantor or to exercise, apply, perfect or recover any Security Interest that the State holds at any time or any funds or property that the State may be entitled to receive or have a claim on.

## Grantors' liability not affected

This Deed and the Liability and responsibility of each Grantor and the State's rights against each Grantor under this Deed or otherwise according to Law, will not be affected or discharged by any of the following:

### (**indulgence**): the granting to any Grantor or to any other person of any time or other indulgence or consideration;

### (**Project Documents**): the State failing or neglecting to recover by the realisation of any Project Documents, other Security Interests or otherwise any of the Secured Money relating to any Grantor;

### (**laches**): any other laches, acquiescence, delay, act, omission or mistake on the part of the State or any other person;

### (**release**): the release, discharge, abandonment or transfer, whether wholly or partially and with or without consideration, of any Project Document, other Security Interests, judgment or negotiable instrument held from time to time or recovered by the State from or against any Grantor or any other person; or

### (**any other thing**): any other matter or thing.

## Release of Collateral

The State will, upon application by a Grantor, grant a release of the relevant Collateral from this Deed, if at the time the release is to be provided, the State is satisfied that none of the Secured Money is owing (whether actually, contingently or prospectively) and none of the Obligations remain to be performed.

# Liability and indemnity

## Waiver by Grantors

To the extent permitted by Law, each Grantor waives in favour of the State:

### any requirement that the State take any action or exhaust any right against any other person before enforcing this Deed against any Grantor;

### all rights against the State and any other person, estate or assets as far as is necessary to give effect to any provision of this Deed;

### promptness and diligence on the part of the State; and

### all rights inconsistent with the provisions of this Deed, including any rights of contribution or subrogation which a Grantor might otherwise be entitled to claim or enforce.

## No liability for loss

To the extent permitted by Law, neither the State, nor any Receiver will have any Liability for any omission, delay or mistake or any loss or irregularity in or about the exercise or attempted exercise, non-exercise or purported exercise of any right, except for fraud or wilful act or omission.

## No liability to account

To the extent permitted by Law, neither the State nor any Receiver will, by reason of the State or the Receiver entering into possession of the whole or part of the Collateral, be liable to account as mortgagee or secured party in possession, or for anything except actual receipts (and, if relevant, attributed to the Collateral), or be liable for any loss on realisation or for any default, omission, delay or mistake for which a mortgagee or secured party in possession might be liable.

## No conflict

The State and any Receiver may exercise any right notwithstanding that the exercise of that right involves a conflict between any duty owed to a Grantor by the State or that Receiver and any duty owed by the State or that Receiver to any other person, or the interests of the State or that Receiver. No contract will be void or voidable by virtue of any such conflict of duty or interest, nor will the State or any Receiver be liable to account to any Grantor or any other person for any money or property as a result of such conflict.

## No notice or duty to enforce

The State is not obliged to give any notice of the security created by this Deed to any debtor of any Grantor, any purchaser or any other person, or to enforce payment of any money payable to any Grantor, or realise any of the Collateral, or to take any steps or proceedings for that purpose.

## Indemnity

The Grantors bear all risks with respect to and must indemnify the State, the Receiver and any attorney appointed under this Deed on demand against any Claim or Liability (including any Claim made by, or Liability to, a third party) which the State, any Receiver or attorney appointed under this Deed suffers or incurs arising out of or in respect of or in connection with:

### (**exercise of right**): the exercise, attempted exercise or non-exercise of any right under this Deed, including (without limitation) those consequent on any mistake, oversight, error of judgment or want of prudence on the part of the State, any Receiver or any attorney appointed under this Deed, unless the same is due to fraud or wilful act or omission;

### (**Enforcement Event**): a consequence of the occurrence of an Enforcement Event; and

### (**act or omission**): any act or omission for which the State or any Receiver is exonerated by this Deed,

### including legal costs (on a full indemnity basis) incurred in defending any action or proceeding relating to a matter the subject of this indemnity.

## Protection of persons dealing with State or Receiver

No person acquiring any money or asset from, or paying or handing over any money or asset to, or otherwise dealing with, the State, the Receiver or any attorney appointed under this Deed, or to whom is tendered for registration an instrument executed by the State, the Receiver or any attorney appointed under this Deed, will be:

### (**inquiries**): bound to inquire:

#### whether the State or the Receiver has the right to dispose of any money or asset;

#### whether an Enforcement Event has occurred;

#### whether any of the Secured Money is owing or payable;

#### whether the Receiver or an attorney has been properly appointed;

#### as to the propriety or regularity of the exercise or purported exercise of any right; or

#### as to any other matter or thing;

### (**actual or constructive notice**): affected by actual or constructive notice that any transaction, document or other dealing is unnecessary or improper; or

### (**application of money or asset**): concerned to see to the application of any money or asset, or be answerable or accountable for any loss or misapplication of any money or asset,

and the irregular, improper or unnecessary exercise of any right will be, as regards the protection of any such person, deemed to be authorised by each Grantor and valid.

# Payments

## Money repayable as agreed or on demand

Unless otherwise provided in the Project Deed, the Secured Money will be payable by each Grantor to the State in Australian dollars on the due date (or if no date is specified immediately on demand by the State).

## Payment of interest

Each Grantor will pay interest on the Secured Money which is due and payable to the State but unpaid in accordance with any State Project Document or, in the absence of any relevant provision, at the Overdue Rate calculated daily from, but excluding, the date upon which or the expiration of the period within which they should have been paid to, and including, the date upon which the moneys are paid.

## Capitalisation of interest

The State may capitalise any interest which has become due and owing in accordance with any State Project Document or, in the absence of any relevant provision, then at such periods of not less than one calendar month and from such dates as the State elects. The accumulation of capitalised interest may continue until the Secured Money has been paid in full notwithstanding any composition, compromise judgment or order in respect of any person or any other thing.

## Merger

If the liability of a Grantor to pay to the State any of the Secured Money becomes merged in any judgment or order, as an independent obligation that Grantor will pay interest at the rate which is the higher of that payable under this Deed and that fixed by or payable under that judgment or order.

## No deduction for taxes and no set off or counterclaim

All payments by a Grantor under any State Project Document, whether of principal, interest or other amounts, will (except as provided for in a Project Document) be:

### (**no set off or counterclaim**): free of any set off or counterclaim; and

### (**no deduction or withholding**): without deduction or withholding for any present or future Tax unless that Grantor is compelled by law to deduct or withhold the same, in which case that Grantor will pay to the State any additional amounts necessary to enable the State to receive, after all deductions and withholding for such Tax, a net amount equal to the full amount which would otherwise have been payable had no such deduction or withholding been required to be made.

# Termination of this Deed

### (**Termination**): This Deed will terminate on the latest of:

#### performance and satisfaction of all of the Obligations; and

#### the date on which all Secured Money has been repaid in full.

### (**Effect of termination**): The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

# Notices

## Notices

All approvals, consents, directions, requirements, determinations, requests, claims, notices, agreements, demands or other communications in connection with this Deed:

### (**in writing**): must be in writing;

### (**addressed**): must be addressed as set out below or to such other addressee as notified by the receiving party to the other party from time to time;

**State:**

Attention: [##]

Address: [##]

Email: [##]

**Project Co:**

Attention: [##]

Address: [##]

Email: [##]

### (**signed**): must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;

### (**form of delivery**): must be delivered by hand or posted by prepaid express post or emailed to the email address of the addressee as referred to in clause 16.1(b); and

### (**taken to be received**): are taken to be received by the addressee:

#### in the case of delivery by hand, on delivery at the address of the addressee as referred to in clause 16.1(b), unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;

#### in the case of prepaid express post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and

#### in the case of email, on the first to occur of:

##### receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;

##### the time that the communication enters an information system which is under the control of the addressee; or

##### the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

# Dispute resolution procedure

## Procedure

Unless a State Project Document provides otherwise or the parties otherwise agree, the parties acknowledge and agree that any dispute between the State and any one or more of the Grantors (each, a **Disputing Party**) arising in connection with this Deed (including questions concerning its existence, meaning or validity) (**Dispute**) must only be resolved in accordance with the following procedure:

### (**negotiation**): first, negotiation as required by clause 17.2.

### (**expert determination**): second, expert determination as required by clause 18; and

### (**arbitration**): third, arbitration in the circumstances stated in clause 19.

## Senior negotiations

### (**Notification**): If a Dispute arises then a party must, if it wants to pursue the Dispute, give notice to the other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers or Managing Directors (or equivalent) of both parties (**Representatives**).

### (**Contents of Notice**): A notice under clause 17.2(a) must:

#### state that it is a notice under clause 17; and

#### include or be accompanied by particulars of the matters which are the subject of the Dispute.

### (**Attempt to resolve Dispute**): If a Dispute is referred to negotiation under clause 17.2(a), then:

#### the Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within [5] Business Days after the date on which the notice under clause 17.2(a) is received or such later date as the parties may agree; and

#### any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each party and will be final and binding on the parties.

# Expert determination procedure

## Referral and selection of expert

### (**Referral**): If a Dispute:

#### remains unresolved (in whole or in part) within 10 Business Days after the date on which the notice under clause 17.2(a) is received or such later date as the parties may agree; and

#### clause 17.1 applies,

then if a party wants to pursue the Dispute, that party must refer the Dispute to expert determination within 20 Business Days after the date on which the notice under clause 17.2(a) is received or such later date as the parties may agree.

### (**Agreement**): Within 5 Business Days after the date on which a Dispute is referred to expert determination under clause 18.1, the parties must endeavour to agree on the expert to be appointed to determine the Dispute.

### (**Exchange of lists of 3 preferred experts**): If the parties are unable to agree on an expert to determine the Dispute, within the 5 Business Day period referred to in clause 18.1(b) the parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 18.1(f) on or before the date which is 10 Business Days after the date on which the Dispute is referred to expert determination under clause 18.1(a).

### (**Appointment of person who appears on both lists**): If:

#### a person appears on both lists under clause 18.1(c), that person will be deemed to be the expert to determine a Dispute; or

#### more than one person appears on both lists, the person given the highest order of priority by the party that made the Claim under clause 17.2(a) will be deemed to be the expert to determine the Dispute.

### (**Appointment if no person appears on both lists**): If no person appears on both lists, the party that made the Claim under this Deed must procure:

#### the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline that is the subject of the relevant Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 18.1(c); or

#### if:

##### there is no governing body for the technical or professional discipline that is the subject of the relevant Dispute;

##### such governing body advises that it will not nominate an expert; or

##### there are multiple technical or professional disciplines that are the subject of the Dispute,

the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 18.1(c),

within 7 Business Days after the exchange of the lists under clause 18.1(c).

### (**Appropriate skills**): It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in Dispute.

### (**No entitlement to challenge appointment**): Neither party will be entitled to challenge the appointment of an expert under this clause 18.1 on the basis that the expert does not satisfy the requirements of clause 18.1(f).

### (**No conflict of interest**): An expert agreed or determined in this clause 18.1 appointed by the parties cannot have any conflict of interest or any relationship with either party or their Associates that a reasonable person may regard as giving rise to the possibility of bias.

### (**Not an arbitration agreement**): Any agreement for expert determination under this Deed will not constitute an arbitration agreement including for the purposes of the *Commercial Arbitration Act 2011* (Vic).

### (**Agreement**): Within 7 Business Days after the expert has notified the Disputing Parties that they are available to be appointed as the expert in respect of the Dispute, the parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other terms as the expert may reasonably require.

### (**Expert not available**): If an expert agreed between the parties or otherwise deemed or determined to be appointed in respect of the Dispute under clause 18.1(b), 18.1(d) or clause 18.1(e) is not available to be appointed as the expert for that Dispute, the parties must appoint a different expert by repeating the process in clause 18.1 save that, if the parties have already exchanged a list of 3 persons in accordance with clause 18.1(c) and there is another expert who appears on both lists, the person given the next highest order of priority by the party that made the Claim under this Deed will be deemed to be the expert.

## Rules of expert determination

1. The expert determination process will be administered in accordance with, and the expert will be required to act, under the terms of the Expert Determination Agreement.

## Expert finding

### (**Notification**): The determination of the expert must be in writing and will be final and binding on the parties unless:

#### the expert determination includes:

##### payment of compensation and the amount claimed, or subsequently determined by the expert to be payable, is equal to or greater than $2,000,000 (Indexed); or

##### an extension of the Date for Acceptance or rejection of an extension to the Date for Acceptance, where the period of the extension that was claimed is more than 5 Business Days; and

#### within 10 Business Days after receipt of the determination, a party gives notice to the other party of its dissatisfaction with the expert's determination.

### (**Amendment to determination**): Upon submission by any party, the expert may amend its determination to correct:

#### a clerical mistake;

#### an error from an accidental slip or omission;

#### a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or

#### a defect in form.

### (**Binding on an interim basis**): Notwithstanding any challenge made under clause 18.3(a) to the determination of an expert, the determination of the expert will be binding on the parties until it is overturned, reversed, varied or otherwise changed by the determination of an arbitrator or a court in accordance with this Deed.

## Proportionate liability

The expert will have no power to apply or to have regard to the provisions of any proportionate liability Legislation which might, in the absence of this clause 18.4, have applied to any Dispute referred to expert determination under this clause 18.

## Liability of expert

### (**Liability of expert**): The parties agree:

#### that the expert will have no liability in connection with the expert determination; and

#### to indemnify the expert against any liability in connection with the expert determination,

#### except in the case of fraud on the part of the expert, in which case a Claim may be made against the expert by any person who is party to the Dispute.

### (**Engagement**): The parties must jointly engage the expert to provide services in connection with the expert determination process and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

## Costs

1. The parties must:

### (**costs of the Disputing Parties**): bear their own costs in connection with the expert determination proceedings; and

### (**costs of expert**): pay an equal portion of the costs of the expert.

# Arbitration

## Reference to arbitration

If:

### (**no referral to expert determination**): a Dispute:

#### which has been referred to the Representatives for negotiation under clause 17.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 17.2(c)(i); and

#### is not a Dispute which the parties must refer to expert determination under clause 17.1,

any party may refer the Dispute to arbitration by notice to that effect to the other party within 30 Business Days after the date on which the notice under clause 17.2(a) is received or such later date as the parties may agree; or

### (**after referral to expert determination**): a Dispute has been referred to expert determination under clause 18.1(a) and:

#### a determination is not made by the expert within 22 Business Days after the execution of the Expert Determination Agreement by the expert, either party may refer the Dispute to arbitration by notice to that effect to the other party within 30 Business Days after the execution of the Expert Determination Agreement by the expert;

#### no expert enters into the Expert Determination Agreement with the parties in accordance with clause 18.1(j) within 30 Business Days after the date on which the Dispute is referred to expert determination under clause 18.1(a), either party may refer the Dispute to arbitration by notice to that effect to the other party within 35 Business Days after the date on which the Dispute was referred to expert determination; or

#### a notice of dissatisfaction in respect of the expert's determination is given under clause 18.3, a party may refer the Dispute to arbitration by notice to that effect to the other party within 35 Business Days after a party gives notice to the other party of its dissatisfaction with the expert's determination in accordance with clause 18.3 in which case the arbitration will be by way of hearing de novo.

## Arbitration

### (**ACICA Rules**): Arbitration in accordance with this clause 19 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) and as otherwise set out in this clause 19.

### (**Seat**): The seat of the arbitration will be Melbourne, Victoria.

### (**Language**): The language of the arbitration will be English.

## Appointment of arbitrator

1. The parties will endeavour to agree on the person to be appointed as arbitrator, but if no such agreement is reached within 14 Business Days after the Dispute is referred to arbitration under clause 19, the arbitrator will be appointed by the Australian Centre for International Commercial Arbitration.

## General principles for conduct of arbitration

### (**Conduct of arbitration**): The parties agree that:

#### they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;

#### any arbitration conducted in accordance with this clause 19 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator;

#### specific issues will be identified for preliminary determination, where efficient to do so; and

#### in conducting the arbitration, the arbitrator must take into account the parties' intentions as set out in clauses 19.4(a)(i) and 19.4(a)(ii).

### (**Evidence in writing**): All evidence in chief must be in writing unless otherwise ordered by the arbitrator.

### (**Evidence and discovery**): The rules for evidence and discovery will be the IBA Rules on Evidence, current as at the date of the referral of the Dispute to arbitration.

### (**Oral hearing**): The oral hearing must be conducted as follows:

#### any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;

#### the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 19.4(a) when determining the duration of the oral hearing;

#### oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;

#### the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;

#### not less than 28 days prior to the date fixed for oral hearing each party must give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination;

#### in exceptional circumstances the arbitrator may amend the date and extend the time for the oral hearing set in accordance with clause 19.4(d)(ii);

#### a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and

#### each party is expected to put its case on significant issues in cross-examination of a relevant witness called by the opposing party or, if it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the opposing party may know the nature of and basis for the challenge to the written evidence of a witness.

### (**Experts**): Unless otherwise ordered, each party may only rely upon one expert witness in connection with any recognised area of specialisation.

## Proportionate liability

1. The arbitrator will have no power to apply or to have regard to the provisions of any proportionate liability Legislation which might, in the absence of this clause 19.5, have applied to any Dispute referred to arbitration under this clause 19.

## Extension of ambit of arbitration proceedings

### (**Extending disputes**): If:

#### a Dispute is referred to arbitration under this clause 19; and

#### there is some other Dispute also between the parties to and under this Deed (whenever occurring),

* 1. the arbitrator may, upon application being made to the arbitrator by one or both of the parties at any time before a final award is made in relation to the Dispute that has been referred to arbitration, make an order directing that the arbitration be extended so as to include the other Dispute.

### (**Arbitrator's order**): An arbitrator may make an order under clause 19.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

## Award final and binding

### (**Final and binding**): Subject to clause 19.7(b), any award will be final and binding on the parties.

### (**Appeal**): Each party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 19.

## Continue to perform

1. Notwithstanding the existence of a Dispute, each party must continue to perform its obligations under this Deed.

## Governing law of arbitration agreement

1. The Law governing this arbitration agreement is the law of Victoria, Australia.

## Interlocutory relief

1. This clause 19 does not prevent a party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect that party's rights.

## Consolidation

The parties agree that section 27C of the *Commercial Arbitration Act 2011* (Vic) will apply.

# Miscellaneous

## Governing Law and jurisdiction

### (**Governing Law**): This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.

### (**Jurisdiction**): Without limiting clauses 17 to 19, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from the courts of Victoria, with respect to any proceedings which may be brought in connection with this Deed.

## Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed and the other State Project Documents:

(a) (**entire understanding**): embody the entire terms agreed between the parties in connection with the Project; and

(b) (**prior agreements**): supersede any prior agreement of the parties in connection with the Project.

## Further acts and documents

### (**Give effect to this Deed**): Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by the State to give effect to this Deed.

### (**Security Interest**): Without limiting clause 20.3(a) if the State determines that a State Project Document (or a transaction related to a State Project Document) is or contains a Security Interest, each Grantor agrees to promptly do anything (including amending any Project Document or executing any new document) which the State reasonably requires for the purposes of:

#### ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;

#### enabling the State to apply for registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the State; or

#### enabling the State to exercise rights in connection with the Security Interest.

## Survival of certain provisions

### (**Surviving clauses**): All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:

#### the State's rights to set-off and recover amounts;

#### confidentiality or privacy;

#### Intellectual Property Rights;

#### any obligation to make any books and accounts and all other records or information available to the State;

#### any indemnity, release or financial security given under this Deed;

#### any limitation on Liability;

#### any obligation which this Deed requires a party to undertake after the rescission, expiration or termination of this Deed; and

#### any right or obligation arising on termination, rescission or expiry of this Deed.

### (**Interpretation**): No provision of this Deed which is expressed to survive the rescission, termination or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the rescission, termination or expiration of this Deed.

### (**Survival of rights and obligations**): No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

## Waiver

### (**Writing**): Other than where the waiver is already given expressly in the terms of this Deed, a waiver that may be given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.

### (**No waiver**): A failure to exercise or enforce, a delay in the exercise or enforcement of or the partial exercise or enforcement of a right provided by Law by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.

### (**No waiver of another breach**): No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

## Consents and approvals

### (**Conditions**): A consent or approval required under this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless otherwise expressly provided in this Deed.

### (**Grantor**): A consent or approval required in accordance with this Deed from a Grantor may not be unreasonably withheld or delayed, unless otherwise expressly provided in this Deed.

### (**Compliance**): Each Grantor must comply, and must procure that each Associate of that Grantor complies, with any condition of a consent or approval given by the State.

### (**Deemed events**): If a Grantor or any Associate of that Grantor fails to comply with any condition of a consent or approval, where the initial failure to obtain that consent or approval would have resulted in:

#### a Default Termination Event, the failure to comply will be deemed to be a Default Termination Event; or

#### a Major Default, the failure to comply will be deemed to be a Major Default.

## Amendments

Unless otherwise expressly provided in this Deed, this Deed may only be amended by a deed executed by or on behalf of each party.

## Expenses

Unless otherwise expressly provided in this Deed or the Project Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## Severance

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

### (**provisions**): any other provision of this Deed; or

### (**other jurisdictions**): that provision under the Law of any other jurisdiction.

## Counterparts

### (**Execution in counterparts**): This Deed may be executed in any number of counterparts or copies, each of which may be executed by physical signature in wet ink or electronically (whether in whole or part). A party who has executed a counterpart of this Deed may exchange it with another party (the **Other Party**) by:

#### emailing a copy of the executed counterpart to the Other Party; or

#### utilising an electronic platform (including DocuSign) to circulate the executed counterpart,

1. and will be taken to have adequately identified themselves by so emailing the copy to the Other Party or utilising the electronic platform.

### (**Consent**): Each party consents to signatories and parties executing this Deed by electronic means and to identifying themselves in the manner specified in this clause.

### (**Counterparts constitute an original**): Each counterpart constitutes an original (whether kept in electronic or paper form), all of which together constitute one instrument as if the signatures (or other execution markings) on the counterparts or copies were on a single physical copy of this Deed in paper form. Without limiting the foregoing, if any of the signatures or other markings on behalf of one party are on different counterparts or copies of this Deed, this shall be taken to be, and have the same effect as, signatures on the same counterpart and on a single copy of this Deed.

## Moratorium Legislation

1. Each Grantor waives, and will procure that each Key Subcontractor waives, any right or remedy it may have under any Law which comes into effect after the date of this Deed if the exercise of such right or remedy would:

### (**no reduction**): lessen any obligation or Liability of any Grantor; or

### (**no prejudice**): prejudicially affect the rights, powers or remedies of the State,

under a State Project Document to which any Grantor or the relevant Key Subcontractor is a party.

## PPSA

1. Each Grantor acknowledges and agrees that:

### (**State’s rights**): if and to the extent that the State at any time forms a belief on reasonable grounds that the State is, or will become, a secured party in connection with this Deed or any other State Project Document or any transaction contemplated by this Deed or any other State Project Document, the State may at the relevant Grantor's expense (as applicable) take all steps that the State considers necessary to:

#### perfect, protect, record, register, amend or remove the registration of, the State’s Security Interest in any relevant personal property that is the subject of the Security Interest (**Relevant Personal Property**); and

#### better secure the State’s position in respect of the Relevant Personal Property under the PPSA;

### (**Key Subcontractor to assist the State**): it will do, and ensure that each Key Subcontractor and the Management Services Contractor does all things reasonably necessary to assist the State to take the steps described in clause 20.12(a);

### (**waiver of right to receive any verification statement**): it irrevocably and unconditionally waives, and will ensure that each Key Subcontractor and the Management Services Contractor irrevocably and unconditionally waives, its right to receive any verification statement in respect of any financing statement or financing change statement relating to this Deed, the security interest under this Deed and any Security Interests of the State in the Relevant Personal Property;

### (**Grantors to notify the State**): other than in relation to Security Interests arising in the ordinary course of the Project Activities and Security Interests described in section 12(d) of the PPSA of which the relevant Grantor is the grantor (but only where the interest does not secure payment or performance of an obligation) it must immediately notify the State if that Grantor, a Key Subcontractor or the Management Services Contractor becomes aware of any person other than the State taking steps to register, or registering, a financing statement in relation to Relevant Personal Property; and

### (**removal of registered Security Interest**): it must arrange, and ensure that each Key Subcontractor and the Management Services Contractor arranges, for the removal or cessation of any registration of any Security Interest that affects the priority of the State’s interest in Relevant Personal Property.

## Indemnity held on trust

### (**Benefit of indemnities**): The State holds on trust for any Receiver the benefit of:

#### each indemnity, release, limitation of Liability and exclusion of Liability given by a Grantor under this Deed in favour of the Receiver; and

#### each right in this Deed to the extent that such right is expressly provided to be for the benefit of the Receiver.

### (**Grantor acknowledgement**): Each Grantor acknowledges the existence of such trusts and consents to the State exercising rights in relation to, or otherwise enforcing such indemnities, releases, limitations and rights on behalf of any Receiver.

### (**Consent not required**): The parties agree that the State does not require the consent of any Receiver to amend or waive any provision of any State Project Document.

## Confidentiality

### (**Waiver**): Each Grantor waives its rights to receive any information under section 275 of the PPSA and agrees not to make any request under that section or to take any action which would otherwise require the State to make a disclosure under that section.

### (**Confidential**): Subject to clause 20.14(c), if any Grantor is a debtor as defined in the PPSA, the parties agree to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and not to disclose that information to anyone.

### (**Exceptions**): Clause 20.14(b) does not apply to any disclosure of information or documents:

#### in any proceeding arising out of or in connection with this Deed to the extent that the disclosure is deemed by the disclosing party necessary to protect its interests;

#### where the information is in the public domain other than as a result of a breach by that disclosing party of this clause 20.14;

#### if required to do so under a binding order of any Authority or any procedure for discovery in any proceedings;

#### if the disclosing party reasonably believes it is required to do so by any law or stock exchange (except that this paragraph does not permit the State to disclose any information of the kind referred to in section 275(1) of the PPSA, to the extent that disclosure can be resisted under subsection 275(6) of the PPSA);

#### otherwise as required or permitted by any State Project Document;

#### to a disclosing party's Related Bodies Corporate, its legal advisors and its consultants as long as it advises them of the confidential nature of the information or documents or that nature is clear from the circumstances of the disclosure;

#### by the State to a proposed assignee or transferee of any rights or obligations under any Project Document or to any sub-participant or other person with whom any other transaction may be entered into under which payments may be made by reference to any Project Document or the relevant Grantor;

#### by the State with the relevant Grantor's prior consent;

#### by the relevant Grantor with the State's prior consent.

### (**Authority to disclose**): Each party authorises disclosures made by the other party in accordance with clause 20.14(c)(i) to 20.14(c)(vii) provided that the disclosure is not otherwise prohibited under any State Project Document.

**Executed** as a deed.

Each signatory executing this Deed (electronically or otherwise) intends by that execution to be bound by this Deed, and where the signatory has signed as an officer or attorney of a party, for that party to be bound by this Deed.

***[Note: Execution blocks to be inserted.]***

**State**

**Grantors**

**Project Co**

1. – Grantors
2. **[##]** of [address]
3. **[##]** of [address]

***[Note: insert as applicable.]***